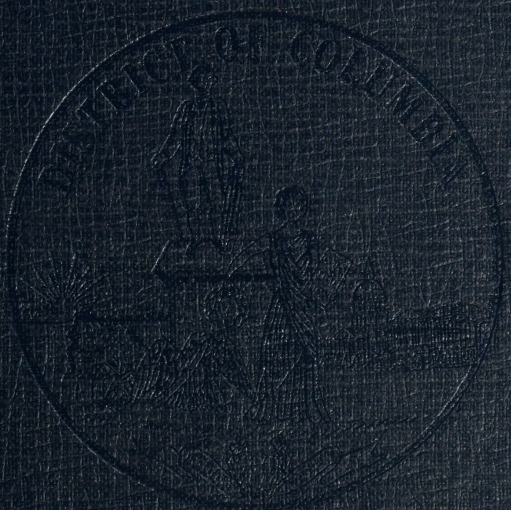
District of Columbia Code

1981 Edition



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DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF FEBRUARY 9, 1996, AND NOTES TO DECISIONS THROUGH MARCH 1, 1996

VOLUME 6A

1996 REPLACEMENT

TITLE 28—COMMERICAL INSTRUMENTS AND TRANSACTIONS
TITLE 29—CORPORATIONS

Prepared and Published Under Authority of the Council of the District of Columbia as supervised by the Office of the General Counsel,
Charlotte M. Brookins-Hudson, General Counsel.
John E. McNeal, Legislative Counsel.
Benjamin F. Bryant, Jr., Codification Counsel.
Karen R. Westbrook, Codification Assistant.

Edited and Annotated by the Editorial Staff of the Publishers
Under the Supervision of Deborah S. Tussey, Peter R. Roane,
Ruth P. Knight, Wanda F. Brown Roszak, Barry L. Bridges,
and Lynn P. Seuffert.

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OFFICE OF THE GENERAL COUNSEL

Under Whose Direction The
Volume Has Been Prepared

Charlotte M. Brookins-Hudson, *General Counsel*
John E. McNeal, *Legislative Counsel*
Benjamin F. Bryant, Jr., *Codification Counsel*
Karen R. Westbrook, *Codification Assistant*

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

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Part 1. Short Title, Construction, Application and Subject Matter.

§ 28:1-101. Short title.

This subtitle shall be known and may be cited as Uniform Commercial Code. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-101.)

Cited in Maurice Elec. Supply Co. v. Anderson Safeway Guard Rail Corp., 632 F. Supp. 1082 (D.D.C. 1986); Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988); Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991); First Sav. Bank v. Barclays Bank, App. D.C.,

618 A.2d 134 (1992); National Union Fire Ins. Co. v. Riggs Nat'l Bank, 5 F.3d 554 (D.C. Cir. 1993).

§ 28:1-102. Purposes; rules of construction; variation by agreement.

(1) This subtitle shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this subtitle are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this subtitle may be varied by agreement, except as otherwise provided in this subtitle and except that the obligations of good faith, diligence, reasonableness and care prescribed by this subtitle may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this subtitle of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this subtitle unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-102.)

Section references. — This section is referred to in §§ 28:2A-518, 28:2A-519, 28:2A-527, and 28:2A-528.

In a suit by a buyer of an automobile against a chattel mortgagee, who repossessed the automobile and held the mortgage created by the seller, the provisions of the Uniform Commercial Code apply. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Cited in Transatlantic Fin. Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

§ 28:1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. The age of majority as it pertains to the capacity to contract is eighteen years of age. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-103; July 22, 1976, D.C. Law 1-75, § 6, 23 DCR 1183.)

Section references. — This section is referred to in § 28:1-201.

Legislative history of Law 1-75. — Law 1-75, the "District of Columbia Age of Majority

Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976 and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

General contract principles govern when the Uniform Commercial Code does not apply to a precise situation. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

Cited in Goldstein v. S & A Restaurant Corp., 622 F. Supp. 139 (D.D.C. 1985); Maurice Elec. Supply Co. v. Anderson Safeway Guard Rail Corp., 632 F. Supp. 1082 (D.D.C. 1986); Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988); Kuwait Airways Corp. v. American Sec. Bank, 890 F.2d 456 (D.C. Cir. 1989).

§ 28:1-104. Construction against implicit repeal.

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-104.)

Cited in Gatoil (U.S.A.), Inc. v. Washington Metro. Area Transit Auth., 801 F.2d 451 (D.C. Cir. 1986).

§ 28:1-105. Territorial application of this subtitle; parties' power to choose applicable law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation, the parties may agree that the law either of the District or of the other state or nation shall govern their rights and duties. Failing such agreement, this subtitle applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods.	§ 28:2-402.
Applicability of the article on leases.	§§ 28:2A-104 and 28:2A-106.
Applicability of the article on bank deposits and collections.	§ 28:4-102.
Bulk transfers subject to the article on bulk transfers.	§ 28:6-102.
Applicability of the article on investment securities.	§ 28:9-103.
Perfection provisions of the article on secured transactions.	§ 28:9-103.
Governing law in the article on funds transfers.	§ 28:4A-507.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-105; Mar. 16, 1982, D.C. Law 4-85, § 2, 29 DCR 309; Apr. 30, 1992, D.C. Law 9-95, § 2(b), 39 DCR 1595; July 22, 1992, D.C. Law 9-128, § 2(c)(1), 39 DCR 3830.)

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-95. — Law 9-95, the "District of Columbia Uniform Commercial Code — Funds Transfers Act of 1992,"

was introduced in Council and assigned Bill No. 9-32, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 7, 1992, and February 4, 1992, respectively. Signed by the Mayor on March 2, 1992, it was assigned Act No. 9-165 and transmitted to both Houses of Congress for its review. D.C. Law 9-95 became effective on April 30, 1992.

Legislative history of Law 9-128. — Law 9-128, the "Uniform Commercial Code, Leases, Act of 1992," was introduced in Council and assigned Bill No. 9-19, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-212 and transmitted to both Houses of Congress for its review. D.C. Law 9-128 became effective on July 22, 1992.

Applicability. — Where transaction does not fall within the purview of Article 9 of this subtitle, the general choice of law provision of this section applies, not § 28:9-103. Goldstein v. Madison Nat'l Bank, 807 F.2d 1070 (D.C. Cir. 1986).

Subsection (1) inapplicable to security interest. — When a security interest is involved, § 28:9-103(5) (now § 28:9-103(3)(c)) controls rather than subsection (1) of this section. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Cited in Lee v. Flintkote Co., 593 F.2d 1275 (D.C. Cir. 1979); Hunt v. Dental Capital Corp., App. D.C., 503 A.2d 205 (1985).

§ 28:1-106. Remedies to be liberally administered.

(1) The remedies provided by this subtitle shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this subtitle or by other rule of law.

(2) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-106.)

Section references. — This section is referred to in § 28:2A-501.

"Snowden credit." — Where plaintiff originally sued 3 alleged tortfeasors but later entered into a consent judgment with one, the remaining defendants are entitled to have that settlement credited against their joint liability as a "Snowden credit." Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983).

§ 28:1-107. Waiver or renunciation of claim or right after breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-107.)

Requirements for waiving right to notice. — The debtor cannot waive his right to notice unless the waiver or renunciation is in writing, or, if done orally, is based on consideration, is not barred by the statute of frauds, and is consistent with § 28:2-209. Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979).

§ 28:1-108. Severability.

If any provision or clause of this subtitle or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle

are declared to be severable. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-108.)

§ 28:1-109. Section captions.

Section captions are parts of this subtitle. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-109.)

Part 2. General Definitions and Principles of Interpretation.

§ 28:1-201. General definitions.

Subject to additional definitions contained in the subsequent articles of this subtitle which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this subtitle:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this subtitle (sections 28:1-205 and 28:2-208). Whether an agreement has legal consequences is determined by the provisions of this subtitle, if applicable; otherwise by the law of contracts (section 28:1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this subtitle and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(14a) "District" means the District of Columbia; and "state" includes the District.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this subtitle to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. The term "holder", with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more nations.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this subtitle.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this subtitle.

(30) "Person" includes an individual or an organization (see section 28:1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37)(a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (§ 28:2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under § 28:2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (§ 28:2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) the lessee has an option to renew the lease or to become the owner of the goods,

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature" means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28:3-303, 28:4-210 and 28:4-211) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and

whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 4; 1973 Ed., § 28:1-201; Mar. 16, 1982, D.C. Law 4-85, § 3, 29 DCR 309; July 22, 1992, D.C. Law 9-128, § 2(c)(2), 39 DCR 3830; Mar. 16, 1993, D.C. Law 9-196, § 2, 39 DCR 9165; Mar. 23, 1995, D.C. Law 10-249, § 2(b)(1), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-103, 28:4A-105, 28:4A-106, 28:7-102, 28:9-105, 28:9-307, 28:9-408, 28:10-104, 38-202, 40-1001, and 40-1101.

Effect of amendments. — D.C. Law 10-249 rewrote (20); substituted "and includes ... 2 or more nations" for "as a part of its currency" at the end of (24); and deleted "or endorsement" following "signature" in (43).

Legislative history of Law 4-85. — See note to § 28:1-105.

Legislative history of Law 9-128. — See note to § 28:1-105.

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

Legislative history of Law 10-249. — Law 10-249, the "Uniform Commercial Code—Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

How notice accomplished. — Under this section, a person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other, in ordinary course, whether or not such other actually comes to know of it. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Lease as security agreement. — In determining whether a lease is a "true lease" or an Article 9 security agreement, the Trial Court must look to the intent of the parties, which depends on "the facts of each case." Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Parties intended lease as a security agreement where several burdens typically associated with ownership of property, such as the obligation to pay license fees and taxes on the equipment, and the obligation to keep the equipment in good repair and the assumption of "the entire risk of loss of and damages to equipment from any and every cause whatsoever" were allocated to lessee, and where lessor's status was as financier, rather than manufacturer or seller, and lessor had no storage facilities for equipment, and where the total price to be paid by lessee greatly exceeded the purchase price of equipment in question. Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Absence of an option to purchase for nominal consideration does not necessarily render a lease a "true lease" and not a security agreement. Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Cited in Slaughter v. Jefferson Fed. Sav. & Loan Ass'n, 538 F.2d 397 (D.C. Cir. 1976); Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983); Alston v. United States, App. D.C., 509 A.2d 1129 (1986);

reasonable time after risk of loss passes to the lessee (§ 28:2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section § 28:2A-530, less expenses saved in consequence of the lessee's default; and

(2) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of default, (ii) the present value as of the date of default of the rent for the remaining lease term of the lease agreement, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee's default.

(b) Except as provided in subsection (c) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(c) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (a) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by § 28:2A-527 or § 28:2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to § 28:2A-527 or § 28:2A-528.

(d) Payment of the judgment for damages obtained pursuant to subsection (a) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(e) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (§ 28:2A-402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under §§ 28:2A-527 and 28:2A-528. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-523.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-530. Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-528 and 28:2A-529.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-531. Standing to sue third parties for injury to goods.

(a) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(1) The lessor has a right of action against the third party, and

(2) The lessee also has a right of action against the third party if the lessee:

(A) Has a security interest in the goods;

(B) Has an insurable interest in the goods; or

(C) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(c) Either party with the consent of the other may sue for the benefit of whom it may concern. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-532. Lessor's rights to residual interest.

In addition to any other necessary recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss or damage to the lessor's residual interest in the goods caused by the default of the lessee. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

Article 3. Negotiable Instruments.

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28:3-409. Acceptance of draft; certified check.
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28:3-501. Presentment.
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28:3-601. Discharge and effect of discharge.
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Revision of article. — D.C. Law 10-249 revised this article. No detailed explanation of the changes made by D.C. Law 10-249 has been attempted, but, where appropriate, historical citations to the former provisions have been added to corresponding sections in the revised article. Former §§ 28:3-506 through 28:3-511 and 28:3-606 and former Parts 7 and 8, consist-

ing of §§ 28:3-701 and 28:3-801 through 28:3-805 were deleted, except that the provisions similar to former § 28:3-802 appear as § 28:3-310.

Editor's notes. — Many of the cases appearing in the notes to this article were decided under the former statutes in effect prior to the 1995 revision. These earlier cases have been moved to pertinent sections of the revised material where they may be useful in interpreting the current statutes.

Part 1. General Provisions and Definitions.

§ 28:3-101. Short title.

This article may be cited as the "Uniform Commercial Code — Negotiable Instruments". (Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-101; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — Law 10-249, the "Uniform Commercial Code — Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law became effective on March 23, 1995.

§ 28:3-102. Subject matter.

(a) This article applies to negotiable instruments. It does not apply to money, to payment orders governed by article 4A, or to securities governed by article 8.

(b) If there is conflict between this article and article 4 or 9, article 4 or 9 governs.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this article to the extent of the inconsistency. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-103. Definitions.

(a) In this article, the term

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or

in the alternative, but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove", with respect to a fact, means to meet the burden of establishing the fact (section 28:1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance". Section 28:3-409.
"Accommodated party". Section 28:3-419.
"Accommodation party". Section 28:3-419.
"Alteration". Section 28:3-407.
"Anomalous indorsement". Section 28:3-205.
"Blank indorsement". Section 28:3-205.
"Cashier's check". Section 28:3-104.
"Certificate of deposit". Section 28:3-104.
"Certified check". Section 28:3-409.
"Check". Section 28:3-104.
"Consideration". Section 28:3-303.
"Draft". Section 28:3-104.
"Holder in due course". Section 28:3-302.
"Incomplete instrument". Section 28:3-115.
"Indorsement". Section 28:3-204.
"Indorser". Section 28:3-204.
"Instrument". Section 28:3-104.
"Issue". Section 28:3-105.
"Issuer". Section 28:3-105.
"Negotiable instrument". Section 28:3-104.
"Negotiation". Section 28:3-201.
"Note". Section 28:3-104.
"Payable at a definite time". Section 28:3-108.
"Payable on demand". Section 28:3-108.
"Payable to bearer". Section 28:3-109.

"Payable to order". Section 28:3-109.
"Payment". Section 28:3-602.
"Person entitled to enforce". Section 28:3-301.
"Presentment". Section 28:3-501.
"Reacquisition". Section 28:3-207.
"Special indorsement". Section 28:3-205.
"Teller's check". Section 28:3-104.
"Transfer of instrument". Section 28:3-203.
"Traveler's check". Section 28:3-104.
"Value". Section 28:3-303.
(c) The following definitions in other articles apply to this article:
"Bank". Section 28:4-105.
"Banking day". Section 28:4-104.
"Clearing house". Section 28:4-104.
"Collecting bank". Section 28:4-105.
"Depositary bank". Section 28:4-105.
"Documentary draft". Section 28:4-104.
"Intermediary bank". Section 28:4-105.
"Item". Section 28:4-104.
"Payor bank". Section 28:4-105.
"Suspends payments". Section 28:4-104.
(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-102; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-104. Negotiable instrument.

(a) Except as provided in subsections (c) and (d) of this section, the term "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) of this section is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-104; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:2-103, 28:3-103, 28:3-106, 28:3-115, 28:4-104, 28:5-103, and 28:9-105.

Legislative history of Law 10-249. — See note to § 28:3-101.

Note with a variable interest rate tied to the prime rate is not a negotiable instrument because it does not contain "an unconditional promise to pay a sum certain" required by section. Beitzell & Co. v. FDIC, 163 Bankr. 637 (Bankr. D.D.C. 1993).

Money orders which are made "payable to" a named payee and not "payable to order or to bearer" are not negotiable. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

Cited in Clemons v. United States, App. D.C., 400 A.2d 1048 (1979); King v. Industrial Bank, App. D.C., 474 A.2d 151 (1984); In re 1301 Connecticut Ave. Assocs., 126 Bankr. 823 (Bankr. D.D.C. 1991); Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

§ 28:3-105. Issue of instrument.

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. (Mar. 23, 1995, D.C. Law 10-249, § 2(d) 42 DCR 467.)

Section references. — This section is referred to in § 28:3-103.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of section 28:3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 28:3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 28:3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-105; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-107. Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-107; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-106.)

Section references. — This section is referred to in §§ 28:2-103, 28:2A-103, 28:5-103, 28:7-102, and 28:9-105.

Right of action after cancellation. — A seller who is willing to take back goods and cancel the contract rather than file an action for the price does not bar a subsequent action for the price after the buyer refuses to return the goods. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

§ 28:2-107. Goods to be severed from realty; recording.

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-107; Mar. 16, 1982, D.C. Law 4-85, § 4, 29 DCR 309.)

Section references. — This section is referred to in § 28:2-105.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendment Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Cited in Stern v. J. Nichols Produce Co., App. D.C., 486 A.2d 84 (1984).

Part 2. Form, Formation and Readjustment of Contract.

§ 28:2-201. Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 28:2-606). (Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-201.)

Section references. — This section is referred to in §§ 28:1-206, 28:2-209, and 28:2-326.

This section requires a quantity term in order for an agreement to be an enforceable contract. R.A. Weaver & Assocs. v. Asphalt Constr., Inc., 587 F.2d 1315 (D.C. Cir. 1978).

Contract modification. — Section 28:2-209 requires that an agreement modifying a contract must conform to this section. Government of Republic of China v. Compass Communications Corp., 473 F. Supp. 1306 (D.D.C. 1979).

Acknowledgment. — Where party acknowledged that an agreement, in the form of Statement of Work and Statement of Understanding, existed between the parties, the acknowledgments did not merely confirm that an agreement, or "joint work project" existed, but sufficiently showed that a contract was formed between the parties. Synergistic Technologies, Inc. v. IDB Mobile Communications, Inc., 871 F. Supp. 24 (D.D.C. 1994).

Defendant is barred from asserting this section as a defense if the facts his counsel stipulated to at trial show that he orally agreed to the contract sought to be enforced against him. Hackney v. Morelite Constr., App. D.C., 418 A.2d 1062 (1980).

by a virgule, is a check payable to the payees in the alternative. Dynalectron Corp. v. Union First Nat'l Bank, 488 F. Supp. 868 (D.D.C. 1980).

§ 28:3-111. Place of payment.

Except as otherwise provided for items in article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-112. Interest.

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-113. Date of instrument.

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 28:4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-114; Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Action on principal does not affect security. — The running of the statute of limitations on a principal debt does not affect a creditor's right to resort to an action for its security. Fox-Greenwald Sheet Metal Co. v. Markowitz Bros., 452 F.2d 1346 (D.C. Cir. 1971).

§ 28:3-114. Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-118; Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-115. Incomplete instrument.

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete, but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c) of this section, if an incomplete instrument is an instrument under section 28:3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 28:3-104, but, after completion, the requirements of section 28:3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 28:3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-115; Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-103, 28:3-412, 28:3-413, 28:3-414, 28:3-415, and 28:4-207.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-116. Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument, 2 or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in section 28:3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged. (Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-119; Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-118. Statute of limitations.

(a) Except as provided in subsection (e) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note, or, if a due date is accelerated, within 6 years after the accelerated due date.

(b) Except as provided in subsection (d) or (e) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 3 years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within 6 years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within 6 years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within 3 years after the cause of action accrues. (Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Action on principal does not affect security. — The running of the statute of limitations on a principal debt does not affect a creditor's right to resort to an action for its security. Fox-Greenwald Sheet Metal Co. v. Markowitz Bros., 452 F.2d 1346 (D.C. Cir. 1971).

§ 28:3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Part 2. Negotiation, Transfer, and Indorsement.

§ 28:3-201. Negotiation.

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-202; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-202. Negotiation subject to rescission.

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-207; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-203. Transfer of instrument; rights acquired by transfer.

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. In this case, the transferee obtains no rights under this article and has only the rights of a partial assignee. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-201; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Right to nonnegotiable money orders. — A band has no greater right to nonnegotiable money orders than the payee. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

§ 28:3-204. Indorsement.

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-203; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Right to nonnegotiable money orders. — A bank has no greater right to nonnegotiable money orders than the payee. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

§ 28:3-205. Special indorsement; blank indorsement; anomalous indorsement.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in section 28:3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-204; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-206. Restrictive indorsement.

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under section 28:3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-302; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-102, 28:3-103, 28:4-104, 28:4-205, 28:4-211, 28:5-103, 28:5-114, 28:9-105, 28:9-309, and 36-1004.

Legislative history of Law 10-249. — See note to § 28:3-101.

Knowledge not imputable as notice. — Where knowledge which the vice-chairman of the board of a bank acquired was in his capacity as a private accountant and not as an official of the bank, the knowledge was not imputable to the bank for the purpose of determining whether the bank, which sought to recover on note, had received knowledge that the note was conditional and subject to defenses. Millman v. State Nat'l Bank, App. D.C., 323 A.2d 723 (1974).

Actual knowledge insufficient. — The trial court's finding that a promissory note which was sold to third persons who were immediately put on notice that it was ridden with infirmities is not sufficient to conclude that the purchase of the note was made with actual knowledge of the infirmities and that the purchasers were not holders in due course. Biggs v. Stewart, App. D.C., 361 A.2d 159 (1976).

Recovery permitted notwithstanding fraud. — A holder of a note who obtained it from a holder in due course could recover on the note notwithstanding alleged fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

Holder in due course status denied. — The working arrangement between the conditional seller and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported the ruling that the assignee could not be given the status of holder in due course. Universal Acceptance Corp. v. Marzullo, App. D.C., 260 A.2d 90 (1969).

Assignee not entitled to holder status. — The assignee of a note was not entitled to

recover a "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was a holder in due course. Fuller v. Universal Acceptance Corp., App. D.C., 264 A.2d 506 (1970).

Cited in American Sec. & Trust Co. v. Equitable Life Ins. Co., 461 F.2d 158 (D.C. Cir. 1971); Warren v. Lopatin, 475 F.2d 1329 (D.C. Cir. 1973); Slaughter v. Jefferson Fed. Sav. & Loan Ass'n, 538 F.2d 397 (D.C. Cir. 1976); First Md. Fin. Servs. Corp. v. District-Realty Title Ins. Corp., App. D.C., 548 A.2d 787 (1988); Jarvis v. Technical Land, Inc., 172 Bankr. 429 (Bankr. D.D.C.), aff'd, 175 Bankr. 792 (Bankr. D.D.C. 1994); Isaac v. First Nat'l Bank, App. D.C., 647 A.2d 1159 (1994).

§ 28:3-303. Value and consideration.

(a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a) of this section, the instrument is also issued for consideration. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-303; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:1-201 and 28:3-103.

Legislative history of Law 10-249. — See note to § 28:3-101.

One who takes a negotiable instrument as collateral for a loan takes for value and may thereby be a holder in due course. Millman v. State Nat'l Bank, App. D.C., 323 A.2d 723 (1974).

§ 28:3-304. Overdue instrument.

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-305. Defenses and claims in recoupment.

(a) Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this section or claims in recoupment stated in subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 28:3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does

not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-207.

Legislative history of Law 10-249. — See note to § 28:3-101.

Recovery permitted notwithstanding fraud. — A holder of a note, who obtained it from a holder in due course, could recover on the note notwithstanding alleged fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

Bank took note free from maker's defenses. — Since the bank, to which payee endorsed and delivered the note, had holder in due course status, the bank which sued the maker and the payee, took note free of maker's defenses asserted against the payee. Millman v. State Nat'l Bank, App. D.C., 323 A.2d 723 (1974).

Bank's status limited to amount withdrawn. — A bank is a holder in due course as to the amount of provisional credit permitted in a customer withdrawn on a check, and, absent the defenses as provided in this section, could recover from the drawer. Falls Church Bank v. Wesley Heights Realty, Inc., App. D.C., 256 A.2d 915 (1969).

§ 28:3-306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. (Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1; 1973 Ed., §§ 28:3-305, 28:3-306; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-302 and 28:3-602.

Legislative history of Law 10-249. — See note to § 28:3-101.

Recovery permitted notwithstanding fraud. — A holder of a note, who obtained it from a holder in due course, could recover on the note notwithstanding alleged fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

Transfer of nonnegotiable money orders. — The transferee of nonnegotiable money orders, although not a holder in due course, could establish a case against a payor who had stopped payment on them, by the production of the instruments and by indicating that the burden of proving any defense is upon the payor. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

Cited in Biggs v. Stewart, App. D.C., 361 A.2d 159 (1976).

§ 28:3-307. Notice of breach of fiduciary duty.

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer, or director, or other representative owing a fiduciary duty with respect to an instrument.

unreasonably dangerous product and liability for breach of implied warranty of merchantability and fitness for particular purpose under D.C. Uniform Commercial Code may not be imposed upon blood banks in connection with providing blood and blood products to hospitals. Kozup v. Georgetown Univ., 663 F. Supp. 1048 (D.D.C. 1987), aff'd as modified, 851 F.2d 437 (D.C. Cir. 1988).

Cited in Bevard v. Howat Concrete Co., 433 F.2d 1202 (D.C. Cir. 1970); Rock Creek Ginger Ale Co. v. Thermice Corp., 352 F. Supp. 522 (D.D.C. 1971); R.A. Weaver & Assocs. v. Asphalt Constr., Inc., 587 F.2d 1315 (D.C. Cir. 1978); District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

§ 28:2-315. Implied warranty: fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-315.)

Section references. — This section is referred to in § 28-3904.

Section does not preclude claims grounded in negligence and/or strict liability in tort. Towers Tenant Ass'n v. Towers Ltd. Partnership, 563 F. Supp. 566 (D.D.C. 1983).

Warranty of commodity does not extend to premises where used. — An implied warranty that a commodity is fit for its intended purpose does not extend to a guaranty that the seller's premises are fit for its reception. Phoenix Assurance Co. v. Potomac Sand & Gravel Co., 343 F. Supp. 658 (D.D.C. 1972), aff'd, 487 F.2d 1213 (D.C. Cir. 1973).

Inapplicability to blood banks. — For public policy reasons, strict liability for an unreasonably dangerous product and liability for breach of implied warranty of merchantability and fitness for particular purpose under D.C. Uniform Commercial Code may not be imposed upon blood banks in connection with providing blood and blood products to hospitals. Kozup v. Georgetown Univ., 663 F. Supp. 1048 (D.D.C. 1987), aff'd as modified, 851 F.2d 437 (D.C. Cir. 1988).

Cited in Bevard v. Howat Concrete Co., 433 F.2d 1202 (D.C. Cir. 1970); District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980); Bowler v. Stewart-Warner Corp., App. D.C., 563 A.2d 344 (1989).

§ 28:2-316. Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 28:2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof".

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language

which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 28:2-718 and 28:2-719). (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-316.)

Section references. — This section is referred to in §§ 28:2-314, 28:2-316.1, and 28-3904.

Implied warranty effective prior to expiration of express warranty. — A seller's implied warranty of merchantability was effective prior to the expiration of the seller's express warranty where the express warranty contained no language which excluded, modified, or was inconsistent with the implied warranty. Lee v. Air Care, Inc., App. D.C., 325 A.2d 598 (1974).

Terms sufficient to invoke exclusion. — Where the written warranties announced, in capital letters, "THE FOLLOWING IS MADE AND GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES AND GUARANTEES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY....", the clause was both sufficiently conspicuous and specific to exclude an implied warranty of merchantability. Potomac Plaza Terraces, Inc. v. QSC Prods., Inc., 868 F. Supp. 346 (D.D.C. 1994).

§ 28:2-316.1. Limitation of exclusion or modification of warranties consumers.

(1) The provisions of section 28:2-316 do not apply to the sale of consumer goods, as defined by section 28:9-109, services, or both.

(2) Any oral or written language used by a seller of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability or fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, such merchant may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(3) The provisions of subsection (2) do not apply to particular defects and limitations of consumer goods and services noted conspicuously in writing at the time of sale.

(4) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties is unenforceable, unless the manufacturer provided reasonable and expeditious means of performing the warranty obligations. (Mar. 16, 1982, D.C. Law 4-85, § 42, 29 DCR 309.)

Legislative history of Law 4-85. — See note to § 28:2-107.

Consumer goods. — For the purposes of subsection (1), consumer goods consist of products used or bought for use primarily for personal, family, or household purposes. Potomac Plaza Terraces, Inc. v. QSC Prods., Inc., 868 F. Supp. 346 (D.D.C. 1994).

Limitations of duration. — Limitations of duration constitute a modification of an implied

warranty within the meaning of this section. Patton v. Chrysler Motors Corp., 119 WLR 1045 (Super. Ct. 1991).

Where a D.C. resident purchased a car in Virginia, this section was applicable to the transaction, not Virginia law, and the implied warranties of merchantability could not be limited to the duration of the express warranty. Patton v. Chrysler Motors Corp., 119 WLR 1045 (Super. Ct. 1991).

Roofing materials. — Because roofing materials are not furniture, furnishings, or personal effects, manufacturer's products could not be considered to be used for household purposes; manufacturer's roofing products thus did not fall within the consumer goods exception and the clause excluding the implied warranty was valid. Potomac Plaza Terraces, Inc. v. QSC Prods., Inc., 868 F. Supp. 346 (D.D.C. 1994).

§ 28:2-317. Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-317.)

Section references. — This section is referred to in § 28-3904.

Cited in Lee v. Air Care, Inc., App. D.C., 325 A.2d 598 (1974).

§ 28:2-318. Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-318.)

Section references. — This section is referred to in § 28-3904.

Cited in Adams v. A.B. & A., Inc., App. D.C., 613 A.2d 858 (1992).

§ 28:2-319. F.O.B. and F.A.S. terms.

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 28:2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (section 28:2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (section 28:2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (section 28:2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-319.)

Section references. — This section is referred to in § 28:2-311.

§ 28:2-320. C.I.F. and C. & F. terms.

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-320.)

§ 28:2-321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-321.)

Section references. — This section is referred to in § 28:2-513.

§ 28:2-322. Delivery "ex-ship".

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place

at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. (Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-322.)

§ 28:2-323. Form of bill of lading required in overseas shipment; "overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. (Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-323.)

Section references. — This section is referred to in §§ 28:2-103, 28:2-503, and 28:7-102.

§ 28:2-324. "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods

(section 28:2-613). (Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-324.)

Section references. — This section is referred to in § 28:2-613.

§ 28:2-325. "Letter of credit" term; "confirmed credit".

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-325.)

Section references. — This section is referred to in § 28:2-103.

§ 28:2-326. Sale on approval and sale or return; consignment sales and rights of creditors.

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 28:2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 28:2-202). (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-326.)

Section references. — This section is referred to in §§ 28:1-201, 28:2-103, 28:2A-103, and 28:9-114.

Cited in Alston v. United States, App. D.C., 509 A.2d 1129 (1986).

§ 28:2-327. Special incidents of sale on approval and sale or return.

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-327.)

Section references. — This section is referred to in § 28:2-509.

§ 28:2-328. Sale by auction.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable

time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-328.)

Part 4. Title, Creditors and Good Faith Purchasers.

§ 28:2-401. Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to

the goods in the seller. Such revesting occurs by operation of law and is not a "sale". (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-401.)

Section references. — This section is referred to in §§ 28:1-201 and 28:2-106.

Title passes upon delivery regardless of time of identification. — Any attempt to delay identification of goods to a contract until after title passes under this section is of no effect; title passes on delivery regardless of when identification is to occur, and this provision cannot be altered by agreement of the parties, custom and usage, or course of dealing. In re Alcom Am. Corp., 156 Bankr. 873 (Bankr. D.D.C. 1993), aff'd, 48 F.3d 539 (D.C. Cir. 1995).

Implicit agreement to pass title. — Where parties had not explicitly agreed otherwise, title passed at the time of delivery of the goods. Accordingly, party who received the goods was the owner and entitled to copy and adapt them. Synergistic Technologies, Inc. v. IDB Mobile Communications, Inc., 871 F. Supp. 24 (D.D.C. 1994).

Cited in Locks v. United States, App. D.C., 388 A.2d 873 (1978); Alston v. United States, App. D.C., 509 A.2d 1129 (1986).

§ 28:2-402. Rights of seller's creditors against sold goods.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 28:2-502 and 28:2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference. (Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-402.)

Section references. — This section is referred to in §§ 28:1-105 and 28:7-504.

§ 28:2-403. Power to transfer; good faith purchase of goods; "entrusting".

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7). (Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-403.)

Section references. — This section is referred to in §§ 28:2-103, 28:2-702, 28:2A-103, and 28:7-503.

Effect of sale of stolen property. — The sale of stolen property does not divest the owner of title even though the sale is made to a bona fide purchaser for value. Schrier v. Home Indem. Co., App. D.C., 273 A.2d 248 (1971).

Automobile dealer who sells a stolen automobile is not a "person with voidable title" within this section. Schrier v. Home Indem. Co., App. D.C., 273 A.2d 248 (1971).

Cited in Locks v. United States, App. D.C., 388 A.2d 873 (1978); Reliance Ins. Co. v. Market Motors, Inc., App. D.C., 498 A.2d 571 (1985).

Part 5. Performance.

§ 28:2-501. Insurable interest in goods; manner of identification of goods.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by

the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-501.)

Section references. — This section is referred to in §§ 28:2-103 and 28:2-401.

Identification of goods to contract. — Identification of goods to the contract establishes when the buyer obtains a special property and an insurable interest in the goods, and also establishes the earliest point at which title to the goods can pass to the buyer. In re Alcom Am. Corp., 156 Bankr. 873 (Bankr. D.D.C. 1993), aff'd, 48 F.3d 539 (D.C. Cir. 1995).

Cited in Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983).

§ 28:2-502. Buyer's right to goods on seller's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-502.)

Section references. — This section is referred to in §§ 28:2-402 and 28:2-711.

§ 28:2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-503.)

Section references. — This section is referred to in §§ 28:2-319 and 28:2-509.

§ 28:2-504. Shipment by seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-504.)

Section references. — This section is referred to in § 28:2-319.

§ 28:2-505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2-507) a non-negotiable bill of lading naming the

buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-505.)

Section references. — This section is referred to in § 28:2-509.

§ 28:2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-506.)

§ 28:2-507. Effect of seller's tender; delivery on condition.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-507.)

Section references. — This section is referred to in § 28:2-505.

§ 28:2-508. Cure by seller of improper tender or delivery; replacement.

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further

reasonable time to substitute a conforming tender. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-508.)

Section references. — This section is referred to in § 28:2-323.

Refusal precludes recission. — Seller's proferred removal of television chassis for a short period to effect full operational efficiency presents no great inconvenience to buyer, and refusal of buyer's agent, on buyer's behalf, to allow this precludes rescission. Wilson v. Scampoli, App. D.C., 228 A.2d 848 (1967).

Opportunity to cure denied. — Plaintiff's failure to make delivery on any occasion within the time limits of the contract, except for one non-conforming tender long before the period of the contract expired, is hardly the kind of event that would earn plaintiff an opportunity to cure his non-performance. Marlowe v. Argentine Naval Comm'n, 808 F.2d 120 (D.C. Cir. 1986).

§ 28:2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4) (b) of section 28:2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2-327) and on effect of breach on risk of loss (section 28:2-510). (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-509.)

§ 28:2-510. Effect of breach on risk of loss.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective

insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-510.)

Section references. — This section is referred to in § 28:2-509.

§ 28:2-511. Tender of payment by buyer; payment by check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this subtitle on the effect of an instrument on an obligation (section 28:3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-511; Mar. 23, 1995, D.C. Law 10-249, § 2(c), 42 DCR 467.)

Effect of amendments. — D.C. Law 10-249 substituted "28:3-310" for "28:3-802" in (3).

Legislative history of Law 10-249. — Law 10-249, the "Uniform Commercial Code—Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 19, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

Cited in Armfield v. Poretsky Mgt., Inc., 112 WLR 2357 (Super. Ct. 1984).

§ 28:2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this subtitle (section 28:5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-512.)

§ 28:2-513. Buyer's right to inspection of goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 28:2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D". or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-513.)

Section references. — This section is referred to in § 28:2-310.

Breach of warranty remedy. — Besides the remedy of recission, the buyer may also affirm the contract and seek damages for a breach of warranty. Rubewa Prods. Co. v. Watson's Quality Turkey Prods., Inc., App. D.C., 242 A.2d 609 (1968).

§ 28:2-514. When documents deliverable on acceptance; when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-514.)

§ 28:2-515. Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-515.)

Part 6. Breach, Repudiation and Excuse.

§ 28:2-601. Buyer's rights on improper delivery.

Subject to the provisions of this article on breach in installment contracts (section 28:2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 28:2-718 and 28:2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-601.)

Cited in Marlowe v. Argentine Naval Comm'n, 808 F.2d 120 (D.C. Cir. 1986).

§ 28:2-602. Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (sections 28:2-603 and 28:2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 28:2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (section 28:2-703). (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-602.)

Section references. — This section is referred to in § 28:2-606.

Offer to return goods required. — If a buyer elects to rescind, he must offer to return the goods within a reasonable time after delivery. Talley v. Campbell Music Co., App. D.C., 219 A.2d 852 (1966).

Notification not seasonable. — Notification of the rejection of goods by the buyer to the seller 6 months after delivery is not seasonable notification within the meaning of the Uniform Commercial Code. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

Notification to the seller that the buyer has a problem with the manner of delivery of goods does not constitute seasonable notification of rejection. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

Waiver of express terms. — Several Uniform Commercial Code provisions indicate that acceptance of non-conforming goods can signify a waiver of the express terms of an agreement: D.C. Code §§ 28:2-602(1), 28:2-606(1), 28:2-612(3). These provisions, considered together, indicate that one party's acceptance or acquiescence without timely objection to non-conforming performance may be evidence of waiver of the express contract terms. Radiation Sys. v. Amplicon, Inc., 882 F. Supp. 1101 (D.D.C. 1995).

Cited in L.J. Robinson, Inc. v. Arber Constr. Co., App. D.C., 292 A.2d 809 (1972).

§ 28:2-603. Merchant buyer's duties as to rightfully rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of section 28:2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make

reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-603.)

Section references. — This section is referred to in § 28:2-602.

§ 28:2-604. Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-604.)

Section references. — This section is referred to in § 28:2-602.

§ 28:2-605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payments against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-605.)

Delay in objection bars recovery. — A contractor who did not object to a delivery of fill for several days is not entitled to recover from the subcontractor the cost of removing the fill which did not meet the contractor's specifications. L.J. Robinson, Inc. v. Arber Constr. Co., App. D.C., 292 A.2d 809 (1972).

§ 28:2-606. What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 28:2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-606.)

Section references. — This section is referred to in §§ 28:2-103 and 28:2-201.

Notification of rejection not seasonable. — Notification to the seller that the buyer has a problem with the manner of delivery of goods does not constitute seasonable notification of rejection. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

Waiver of express terms. — Several Uniform Commercial Code provisions indicate that acceptance of non-conforming goods can signify a waiver of the express terms of an agreement: D.C. Code §§ 28:2-602(1), 28:2-606(1), 28:2-612(3). These provisions, considered together, indicate that one party's acceptance or acquiescence without timely objection to non-conforming performance may be evidence of waiver of the express contract terms. Radiation Sys. v. Amplicon, Inc., 882 F. Supp. 1101 (D.D.C. 1995).

Cited in L.J. Robinson, Inc. v. Arber Constr. Co., App. D.C., 292 A.2d 809 (1972).

§ 28:2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do

so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsection (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 28:2-312). (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-607.)

Section references. — This section is referred to in § 28:2-714.

Breach of warranty remedy. — Besides the remedy of rescission, the buyer may also affirm the contract and seek damages for a breach of warranty. Rubewa Prods. Co. v. Watson's Quality Turkey Prods., Inc., App. D.C., 242 A.2d 609 (1968).

Determination of "reasonable time" is question of fact. — What, under District of Columbia law, constitutes a "reasonable time" is a question of fact unless all the circumstances lead to but 1 conclusion. Mariner Water Renaturalizer of Wash., Inc. v. Aqua Purification Sys., 665 F.2d 1066 (D.C. Cir. 1981).

Time interval between discovery of breach of warranty and buyer's alleged notification of seller 5 to 8 weeks later exceeded bounds of reasonableness, especially in light of the high standards by which transactions between merchants are measured under the Uniform Commercial Code. Mariner Water Renaturalizer of Wash., Inc. v. Aqua Purification Sys., 665 F.2d 1066 (D.C. Cir. 1981).

Cited in Rock Creek Ginger Ale Co. v. Thermice Corp., 352 F. Supp. 522 (D.D.C. 1971); Fateh v. Rich, App. D.C., 481 A.2d 464 (1984).

§ 28:2-608. Revocation of acceptance in whole or in part.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-608.)

Refusal precludes rescission. — Seller's proffered removal of television chassis for a short period to effect full operational efficiency presents no great inconvenience to buyer, and refusal of buyer's agent, on buyer's behalf, to allow this precludes rescission. Wilson v. Scampoli, App. D.C., 228 A.2d 848 (1967).

§ 28:2-609. Right to adequate assurance of performance.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-609.)

Section references. — This section is referred to in §§ 28:2-210 and 28:2-611.

Actions not request for assurance. — Letter stating that terms of contract call for payment within 10 days from the date of invoice, but that all future deliveries on the account would be held in the warehouse until the account was brought current, and that once the account was brought to a current status, all deliveries would then be performed on a pro forma basis; i.e., payment was to precede rather than follow delivery, was not a request for assurance, but was instead a unilateral alteration of the contract's terms, as well as an express refusal to render performance due under the terms of the original agreement that invoices and payment were to follow, not precede, delivery. Design for Bus. Interiors, Inc. v. Herson's, Inc., 659 F. Supp. 1103 (D.D.C. 1986).

Cited in Goldstein v. S & A Restaurant Corp., 622 F. Supp. 139 (D.D.C. 1985).

§ 28:2-610. Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 28:2-703 or section 28:2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 28:2-704). (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-610.)

Section references. — This section is referred to in §§ 28:2-709 and 28:5-115.

Recovery after repudiation. — A party to a contract has the right to recover for breach where the repudiating party has communicated, by word or conduct, unequivocally and positively, its intention not to perform. Government of Republic of China v. Compass Commu-

nications Corp., 473 F. Supp. 1306 (D.D.C. 1979).

Substantial impairment of contract. — A buyer who has contracted for the right to receive and inspect goods at his premises before making payment, and who is then told that he must pay in advance of delivery as to all performances still owed by the seller, has suffered substantial impairment of the contract. Design for Bus. Interiors, Inc. v. Herson's, Inc., 659 F. Supp. 1103 (D.D.C. 1986).

Actions constituting repudiation of contract. — Letter stating that terms of contract call for payment within 10 days from the date of invoice, but that all future deliveries on the account would be held in the warehouse until the account was brought current, and that once the account was brought to a current status, all deliveries would then be performed on a pro forma basis; i.e., payment was to precede rather than follow delivery, was not a request for assurance, but was instead a unilateral alteration of the contract's terms, as well as an express refusal to render performance due under the terms of the original agreement that invoices and payment were to follow, not precede, delivery. Design for Bus. Interiors, Inc. v. Herson's, Inc., 659 F. Supp. 1103 (D.D.C. 1986).

Requirements contract. — A seller who violates his duty to exercise good faith by his lack of effort in attempting to secure the fulfillment of a condition precedent to a requirements contract, thereby preventing the underlying contract from coming into effect, can be held liable for the difference between the cost to the buyer of substitute goods and the contract price. Gatoil (U.S.A.), Inc. v. Washington Metro. Area Transit Auth., 801 F.2d 451 (D.C. Cir. 1986).

Employee acted in "commercially reasonable manner." — Where there was an anticipatory breach of an employment agreement, the employee acted in a commercially reasonable manner by waiting thirty days before making his resignation effective. Computer Data Sys. v. Kleinberg, 759 F. Supp. 10 (D.D.C. 1990).

§ 28:2-611. Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 28:2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-611.)

§ 28:2-612. "Installment contract"; breach.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a

non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-612.)

Section references. — This section is referred to in §§ 28:2-103, 28:2-601, 28:2-616, 28:2-703, and 28:2-711.

Waiver of express terms. — Several Uniform Commercial Code provisions indicate that acceptance of non-conforming goods can signify a waiver of the express terms of an agreement: D.C. Code §§ 28:2-602(1), 28:2-606(1), 28:2-612(3). These provisions, considered together, indicate that one party's acceptance or acquiescence without timely objection to non-conforming performance may be evidence of waiver of the express contract terms. Radiation Sys. v. Amplicon, Inc., 882 F. Supp. 1101 (D.D.C. 1995).

§ 28:2-613. Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 28:2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-613.)

Section references. — This section is referred to in § 28:2-324.

§ 28:2-614. Substituted performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-614.)

Express expectation may not amount to a condition of performance for the purposes of the doctrine of impossibility of performance. Transatlantic Fin. Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

§ 28:2-615. Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) the seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-615.)

In order to justify relief under the doctrine of impossibility of performance, there has to be a substantial variation between expected cost and cost of performing by available alternative means. Transatlantic Fin. Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

§ 28:2-616. Procedure on notice claiming excuse.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (section 28:2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-616.)

Part 7. Remedies.

§ 28:2-701. Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-701.)

§ 28:2-702. Seller's remedies on discovery of buyer's insolvency.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 28:2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this article (section 28:2-403). Successful reclamation of goods excludes all other remedies with respect to them. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-702; Mar. 16, 1982, D.C. Law 4-85, § 5, 29 DCR 309.)

Section references. — This section is referred to in § 28:2-705.

Legislative history of Law 4-85. — See note to § 28:2-107.

§ 28:2-703. Seller's remedies in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 28:2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (section 28:2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (section 28:2-706);

(e) recover damages for non-acceptance (section 28:2-708) or in a proper case the price (section 28:2-709);

(f) cancel. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-703.)

Section references. — This section is referred to in §§ 28:2-602, 28:2-610, and 28:2-706.

Right of action after cancellation. — A seller who is willing to take back goods and cancel the contract rather than file an action for the price does not bar a subsequent action for the price after the buyer refuses to return the goods. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

§ 28:2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-704.)

Section references. — This section is referred to in § 28:2-610.

§ 28:2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28:2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-705.)

Section references. — This section is referred to in §§ 28:2-702, 28:2-703, 28:2-707, 28:7-403, and 28:7-504.

§ 28:2-706. Seller's resale including contract for resale.

(1) Under the conditions stated in section 28:2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (section 28:2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 28:2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of section 28:2-711). (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-706.)

Section references. — This section is referred to in §§ 28:2-703, 28:2-707, 28:2-711, and 28:2-718.

Mitigation of damages. — Any profit on an immediate resale of an investment mitigates the damages payable by the breaching party. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

Profit realized on resale after 3 years does not mitigate the damages payable by a breaching party. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

§ 28:2-707. "Person in the position of a seller".

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 28:2-705) and resell (section 28:2-706) and recover incidental damages (section 28:2-710). (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-707.)

Section references. — This section is referred to in §§ 28:2-103, 28:2-104, 28:2-706, and 28:5-115.

§ 28:2-708. Seller's damages for non-acceptance or repudiation.

(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 28:2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 28:2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 28:2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-708.)

Section references. — This section is referred to in §§ 28:2-703 and 28:2-723.

General rule does not apply when seller has performed all obligations. — The measure of damages for breach of a contract of sale is normally the difference between the contract price and the fair market value of the property at the time of breach but this rule for determining the measure of damages resulting from the breach of an executory contract has no application to a case where the seller has performed all his obligations under the contract and all that remains is for the buyer to render payment. Fateh v. Rich, App. D.C., 481 A.2d 464 (1984).

§ 28:2-709. Action for the price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 28:2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-709.)

Section references. — This section is referred to in § 28:2-703.

Right of action after cancellation. — A seller who is willing to take back goods and cancel the contract rather than file an action for the price does not bar a subsequent action for the price after the buyer refuses to return the goods. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

§ 28:2-710. Seller's incidental damages.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-710.)

Section references. — This section is referred to in §§ 28:2-706, 28:2-707, 28:2-708, and 28:5-115.

§ 28:2-711. Buyer's remedies in general; buyer's security interest in rejected goods.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole of the breach goes to the whole contract (section 28:2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this article (section 28:2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 28:2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this article (section 28:2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 28:2-706). (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-711.)

Section references. — This section is referred to in §§ 28:2-602, 28:2-603, 28:2-610, and 28:2-706.

Collection of damages. — If specific performance or replevin is not a realistic alternative, the buyer may collect damages either for cover or for nondelivery. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

A seller who violates his duty to exercise good faith by his lack of effort in attempting to secure the fulfillment of a condition precedent to a requirements contract, thereby preventing the underlying contract from coming into effect, can be held liable for the difference between the cost to the buyer of substitute goods and the contract price. Gatoil (U.S.A), Inc. v. Washington Metro. Area Transit Auth., 801 F.2d 451 (D.C. Cir. 1986).

Recoupment by diminution of purchase price. — Upon a breach of warranty, the buyer may keep the merchandise and seek recoupment by way of the diminution of the purchase price under the contract. Talley v. Campbell Music Co., App. D.C., 219 A.2d 852 (1966).

§ 28:2-712. "Cover"; buyer's procurement of substitute goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 28:2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-712.)

Section references. — This section is referred to in § 28:2-103.

Collection of damages. — If specific performance or replevin is not a realistic alternative, the buyer may collect damages either for cover or for nondelivery. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

A seller who violates his duty to exercise good faith by his lack of effort in attempting to secure the fulfillment of a condition precedent to a requirements contract, thereby preventing the underlying contract from coming into effect, can be held liable for the difference between the cost to the buyer of substitute goods and the contract price. Gatoil (U.S.A.), Inc. v. Washington Metro. Area Transit Auth., 801 F.2d 451 (D.C. Cir. 1986).

Mitigation of damages. — Any profit on an immediate resale of an investment mitigates the damages payable by the breaching party. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

Profits realized on a resale after 3 years do not mitigate the damages payable by a breaching party. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

Unanticipated costs. — Plaintiff need not bear the burden of the unanticipated costs that were actually incurred because the selected method of repair proved more expensive. District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

§ 28:2-713. Buyer's damages for non-delivery or repudiation.

(1) Subject to the provisions of this article with respect to proof of market price (section 28:2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 28:2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-713.)

Section references. — This section is referred to in §§ 28:2-711 and 28:2-723.

Collection of damages. — If specific performance or replevin is not a realistic alternative, the buyer may collect damages either for cover or for nondelivery. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

§ 28:2-714. Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of section 28:2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-714.)

Extent of damage liability. — Upon a breach of contract, the defendant is liable for damages which are a natural consequence and proximate result of his conduct. Meyers v. Antone, App. D.C., 227 A.2d 56 (1967); Rubewa Prods. Co. v. Watson's Quality Turkey Prods., Inc., App. D.C., 242 A.2d 609 (1968).

A plaintiff can recover damages only for those injuries which are reasonably foreseeable by the parties, and only for reasonable actions taken by the plaintiff. District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

Where a contract contained no clause designating a remedy, but where specifications for the project provided for one, it is not an exclusive remedy and the plaintiff's measure of damages for breach is not limited to any particular remedy. District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

Affirmation limits recovery. — Upon affirmation, a buyer's recovery is limited to the difference in value of the goods as delivered and the value they would have had if they had met the warranty. Talley v. Campbell Music Co., App. D.C., 219 A.2d 852 (1966).

Recoupment by diminution of purchase price. — Upon a breach of warranty, the buyer may keep the merchandise and seek recoupment by way of the diminution of the purchase price under the contract. Talley v. Campbell Music Co., App. D.C., 219 A.2d 852 (1966).

Cited in Bevard v. Howat Concrete Co., 433 F.2d 1202 (D.C. Cir. 1970); Rubewa Prods. Co. v. Watson's Quality Turkey Prods., Inc., App. D.C., 294 A.2d 378 (1972); Mileham & King, Inc. v. Fitzgerald, 110 WLR 637 (Super. Ct. 1982); Potomac Plaza Terraces, Inc. v. QSC Prods., Inc., 868 F. Supp. 346 (D.D.C. 1994).

§ 28:2-715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting has reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-715.)

Section references. — This section is referred to in §§ 28:2-712 and 28:2-713.

Damage terms distinguished. — The term "consequential" is generally used to describe "natural" or "general" damages, whereas "incidental" damages refer to the other "special" damages accompanying a breach of contract. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

Compensatory intent. — Both incidental and consequential damages are intended to compensate a party for the loss incurred by the other's breach. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

Incidental damages for breach need not be foreseeable. — Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

Measure of consequential damages for breach of contract under the UCC does not differ from that developed in the District's pre-UCC case law. Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

Cited in Bevard v. Howat Concrete Co., 433 F.2d 1202 (D.C. Cir. 1970); District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

§ 28:2-716. Buyer's right to specific performance or replevin.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-716.)

Section references. — This section is referred to in §§ 28:2-402 and 28:2-711.

§ 28:2-717. Deduction of damages from the price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any

part of the price still due under the same contract. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-717.)

Withholding payment justified. — Where the contract itself authorized plaintiff to deduct the amount of any claim from payment due, and where absent such a clause, this section would authorize plaintiff's actions withholding payment to defendant based on a breach by defendant, implicit in the trial judge's finding that plaintiff was entitled to damages for breach of contract is the conclusion that withholding payment under the contract was justified, and that plaintiff was not in breach of the contract. District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

§ 28:2-718. Liquidation or limitation of damages; deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 28:2-706). (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-718.)

Section references. — This section is referred to in §§ 28:2-316 and 28:2-601.

§ 28:2-719. Contractual modification or limitation of remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to

return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-719.)

Section references. — This section is referred to in §§ 28:2-316 and 28:2-601.

Requirements for limitation of remedies. — The District of Columbia allows parties to limit the remedies available for a breach of contract as long as prescribed remedy is exclusive and does not fail of its essential purpose. Potomac Plaza Terraces, Inc. v. QSC Prods., Inc., 868 F. Supp. 346 (D.D.C. 1994).

Where a contract contained no clause designating a remedy, but where specifications for the project provided for one, it is not an exclusive remedy, and the plaintiff's measure of damages for breach is not limited to any particular remedy. District Concrete Co. v. Bernstein Concrete Corp., App. D.C., 418 A.2d 1030 (1980).

§ 28:2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-720.)

Right of action after cancellation. — A seller who is willing to take back goods and cancel the contract rather than file an action for the price does not bar a subsequent action for the price after the buyer refuses to return the goods. Robinson v. Jonathan Logan Fin., App. D.C., 277 A.2d 115 (1971).

§ 28:2-721. Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-721.)

§ 28:2-722. Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss

under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-722.)

"Snowden credit." — Where plaintiff originally sued 3 alleged tortfeasors but later entered into a consent judgment with one, the remaining defendants are entitled to have that settlement credited against their joint liability as a "Snowden credit." Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983).

§ 28:2-723. Proof of market price: time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 28:2-708 or section 28:2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-723.)

Section references. — This section is referred to in §§ 28:2-708 and 28:2-713.

§ 28:2-724. Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-724.)

§ 28:2-725. Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this subtitle becomes effective. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-725.)

Cross references. — As to limitation of actions, see § 12-301.

Section references. — This section is referred to in § 12-301.

This section does not apply to actions that accrued prior to January 1, 1965. Sears, Roebuck & Co., v. Goudie, App. D.C., 290 A.2d 826, cert. denied, 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501 (1972).

When statute begins to run. — The discovery rule does not apply to determine when the statute of limitations begin to run for breach of warranty products liability claims; rather, the statute of limitations accrues when tender of delivery of the warranted product is made. Long v. Sears Roebuck & Co., 877 F. Supp. 8 (D.D.C. 1995).

Tolling of statute under doctrine of fraudulent concealment. — Under the doctrine of fraudulent concealment time does not begin to run until plaintiff discovers, or by reasonable diligence could have discovered, the basis of the lawsuit. Walsh v. Ford Motor Co., 616 F. Supp. 1170 (D.D.C. 1985).

Appeal dismissed. — Plaintiff's appeal to an action for breach of contract, barred by the statute of limitations, was dismissed as frivolous where the original action was initiated more than 6 years after the contract was made. Tolson v. Handley Ford, Inc., App. D.C., 304 A.2d 634 (1973).

Cited in Hull v. Eaton Corp., 825 F.2d 448 (D.C. Cir. 1987); J. Frogg, Ltd. v. Khambata, 117 WLR 293 (Super. Ct. 1989).

Article 2A. Leases.

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Part 1. General Provisions.

§ 28:2A-101. Short title.

This article shall be known and may be cited as the Uniform Commercial Code — Leases. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — Law 9-128, the "Uniform Commercial Code, Leases, Act of 1992," was introduced in Council and assigned Bill No. 9-19, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-212 and transmitted to both Houses of Congress for its review. D.C. Law 9-128 became effective on July 22, 1992.

§ 28:2A-102. Scope.

This article applies to any transaction, regardless of form, that creates a lease. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-103. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(6) "Fault" means wrongful act, omission, breach, or default.

(7) "Finance lease" means a lease with respect to which:

(A) The lessor does not select, manufacture, or supply the goods;

(B) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(C) One of the following occurs:

(i) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(ii) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(iii) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimer of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(iv) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(8) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 28:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(15) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this article and the sections in which they appear are:

"Accessions". § 28:2A-310(a).
"Construction mortgage". § 28:2A-309(a)(4).
"Encumbrance". § 28:2A-309(a)(5).
"Fixture filing". § 28:2A-309(a)(2).
"Fixtures". § 28:2A-309(a)(1).
"Purchase money lease". § 28:2A-309(a)(3).

(c) The following definitions in other articles apply to this article:

"Account". § 28:9-106.
"Between merchants". § 28:2-104(3).
"Buyer". § 28:2-103(1)(a).
"Chattel paper". § 28:9-105(1)(b).
"Consumer goods". § 28:9-109(1).
"Document." § 28:9-105(1)(f).
"Entrusting". § 28:2-403(3).
"General intangibles". § 28:9-106.
"Good faith". § 28:2-103(1)(b).
"Instrument". § 28:9-105(1)(i).
"Merchant". § 28:2-104(1).
"Mortgage". § 28:9-105(1)(j).
"Pursuant to commitment". § 28:9-105(1)(k).
"Receipt". § 28:2-103(1)(c).
"Sale". § 28:2-106(1).
"Sale on approval". § 28:2-326.
"Sale or return". § 28:2-326.
"Seller". § 28:2-103(1)(d).

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-104. Leases subject to other law.

(a) A lease, although subject to this article, is also subject to any applicable:

(1) Certificate of title statute of the District;

(2) Certificate of title statute of another jurisdiction (§ 28:2A-105); or

(3) Consumer protection statute of the District, or final consumer protection decision of a court of the District existing on the effective date of this article.

(b) In case of conflict between this article, other than §§ 28:2A-105, 28:2A-304(c), and 28:2A-305(c), and a statute or decision referred to in subsection (a) of this section, the statute controls.

(c) Failure to comply with an applicable law has only the effect specified therein. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-105. Territorial application of article to goods covered by certificate of title.

Subject to the provisions of §§ 28:2A-304(c) and 28:2A-305(c), with respect to goods covered by a certificate of title issued under a statute of the District or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (i) surrender of the certificate, or (ii) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:1-105 and 28:2A-104.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(a) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(b) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:1-105.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-107. Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-108. Unconscionability.

(a) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(d) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(1) If the court finds unconscionability under subsection (a) or (b) of this section, the court shall award reasonable attorney's fees to the lessee.

(2) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) of this section is not controlling. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-109. Option to accelerate at will.

(a) A term providing that one party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he or she deems himself or herself insecure" or in words

of similar import must be construed to mean that he or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

(b) With respect to a consumer lease, the burden of establishing good faith under subsection (a) of this section is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

Part 2. Formation and Construction of Lease Contract.

§ 28:2A-201. Statute of frauds.

(a) A lease contract is not enforceable by way of action or defense unless:

(1) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(2) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(b) Any description of leased goods or of the lease term is sufficient and satisfies subsection (a)(2) of this section, whether or not it is specific, if it reasonably identifies what is described.

(c) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (a)(2) of this section beyond the lease term and the quantity of goods shown in the writing.

(d) A lease contract that does not satisfy the requirements of subsection (a) of this section, but which is valid in other respects, is enforceable:

(1) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(2) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) With respect to goods that have been received and accepted by the lessee.

(e) The lease term under a lease contract referred to in subsection (d) of this section is:

(1) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(2) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(3) A reasonable lease term. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-214.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-203. Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-204. Formation in general.

(a) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(b) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(c) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-205. Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-206. Offer and acceptance in formation of lease contract.

(a) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(b) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-207. Course of performance or practical construction.

(a) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(b) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(c) Subject to the provisions of § 28:2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-208. Modification, rescission, and waiver.

(a) An agreement modifying a lease contract needs no consideration to be binding.

(b) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(c) Although an attempt at modification or rescission does not satisfy the requirements of subsection (b) of this section, it may operate as a waiver.

(d) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-207.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-209. Lessee under finance lease as beneficiary of supply contract.

(a) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(b) The extension of the benefit of a supplier's promises and of warranties to the lessee (§ 28:2A-209(a)) does not:

(1) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(2) Impose any duty or liability under the supply contract on the lessee.

(c) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(d) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (a) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; July 25, 1995, D.C. Law 11-30, § 7(a), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30, in (a), substituted "part of the supply" for "part the supply"; and, in the introductory language of (b), substituted "benefit of a supplier's promises" for "benefit a supplier's promises" and "(28:2A-209(a))" for "(28:2A-209(1))."

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 11-30 — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

§ 28:2A-210. Express warranties.

(a) Express warranties by the lessor are created as follows:

(1) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(3) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.

(a) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(b) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(c) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-214 and 28:2A-516.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-212. Implied warranty of merchantability.

(a) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(b) Goods to be merchantable must:

(1) Pass without objection in the trade under the description in the lease agreement;

(2) In the case of fungible goods, be of fair average quality within the description;

(3) Be fit for the ordinary purposes for which goods of that type are used;

(4) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(5) Be adequately contained, packaged, and labeled as the lease agreement may require; and

(6) Conform to any promises or affirmations of fact made on the container or label.

(c) Other implied warranties may arise from course of dealing or usage of trade. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-213. Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-214. Exclusion or modification of warranties.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of § 28:2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(b) Subject to subsection (c) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (c) of this section, to exclude or modify any implied warranty of fitness the

exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(c) Notwithstanding subsection (b) of this section, but subject to subsection (d) of this section:

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(2) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(3) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(d) To exclude or modify a warranty against interference or against infringement (§ 28:2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-215. Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-216. Third party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against the beneficiary designated under this section. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-217. Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) When the young are conceived, if the lease contract is for a lease of unborn young of animals. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-522.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-218. Insurance and proceeds.

(a) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(b) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(c) Notwithstanding a lessee's insurable interest under subsections (a) and (b) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(d) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(e) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by

agreement may determine the beneficiary of the proceeds of the insurance. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-219. Risk of loss.

(a) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(b) Subject to the provisions of this article on the effect of default on risk of loss (§ 28:2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(1) If the lease contract requires or authorizes the goods to be shipped by carrier

(A) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(B) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(2) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(3) In any case not within paragraph (1) or (2) of this subsection, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-529.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-220. Effect of default on risk of loss.

(a) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(1) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(2) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(b) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a

commercially reasonable time. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-219.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-221. Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or § 28:2A-219, then:

(1) If the loss is total, the lease contract is avoided; and

(2) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

Part 3. Effect of Lease Contract.

§ 28:2A-301. Enforceability of lease contract.

Except as otherwise provided in this article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-302. Title to and possession of goods.

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

(a) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of § 28:9-102(1)(b).

(b) Except as provided in subsections (c) and (d) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the right and remedies provided in subsection (e) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(c) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event or default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract, or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (e) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(d) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (d) of this section.

(e) Subject to subsections (c) and (d) of this section:

(1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in § 28:2A-501(b);

(2) If paragraph (1) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement, or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract,

unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transfer is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(f) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(g) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(h) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; May 16, 1995, D.C. Law 10-255, § 21, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 7(b), 42 DCR 1547.)

Section references. — This section is referred to in §§ 28:2A-304 and 28:2A-305.

Effect of amendments. — D.C. Law 10-255 validated a previously made section reference change at the end of (e)(1).

D.C. Law 11-30, in (e)(1), substituted "§ 28:2A-501(b)" for "§ 28:2A-501"; and, in (e)(2)(ii), substituted "jurisdiction" for "jurisdication."

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

Legislative history of Law 11-30. — See note to § 28:2A-209.

§ 28:2A-304. Subsequent lease of goods by lessor.

(a) Subject to § 28:2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and, except as provided in subsection (b) of this section and § 28:2A-527(d), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(1) The lessor's transferor was deceived as to the identity of the lessor;

(2) The delivery was in exchange for a check which is later dishonored;

(3) It was agreed that the transaction was to be a "cash sale"; or

(4) The delivery was procured through fraud punishable as larcenous under the criminal law.

(b) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(c) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of the District or of another jurisdiction takes no greater rights than those provided both by this and by the certificate of title statute. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-104 and 28:2A-105.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-305. Sale or sublease of goods by lessee.

(a) Subject to the provisions of § 28:2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (b) of this section and § 28:2A-511(d), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(1) The lessor was deceived as to the identity of the lessee;

(2) The delivery was in exchange for a check which is later dishonored; or

(3) The delivery was procured through fraud punishable as larcenous under the criminal law.

(b) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(c) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of the District of Columbia or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. (July 22, 1992, D.C. Law 9-128, § 2(b), 38 DCR 3830; July 25, 1995, D.C. Law 11-30, § 7(c), 42 DCR 1547.)

Section references. — This section is referred to in §§ 28:2A-104 and 28:2A-105.

Effect of amendments. — D.C. Law 11-30 substituted "subsection (b) of this section" for "subsection (b)" in the first sentence of (a).

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 11-30. — See note to § 28:2A-209.

§ 28:2A-306. Priority of certain liens arising by operation of law.

If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-307.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(a) Except as otherwise provided in § 28:2A-306, a creditor of a lessee takes subject to the lease contract.

(b) Except as otherwise provided in subsections (c) and (d) of this section and in §§ 28:2A-306 and 28:2A-308, a creditor of a lessor takes subject to the lease contract unless:

(1) The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(2) The creditor holds a security interest in the goods and the lessee did not give value and received delivery of the goods without knowledge of the security interest; or

(3) The creditor holds a security interest in the goods which was perfected (§ 28:9-303) before the lease contract became enforceable.

(c) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

(d) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-308. Special rights of creditors.

(a) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of

possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(b) Nothing in this article impairs the rights of creditors of a lessor if the lease contract (i) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (ii) is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.

(c) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-307.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-309. Lessor's and lessee's rights when goods become fixtures.

(a) In this section:

(1) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;[.]

(2) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of § 28:9-402(5).

(3) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

(4) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(5) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(b) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(c) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(d) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(1) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of

the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(2) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(e) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(1) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(2) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(3) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(4) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(f) Notwithstanding subsection (d)(1) of this section but otherwise subject to subsections (d) and (e) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(g) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of a encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(h) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods

removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(i) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9). (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-103.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-310. Lessor's and lessee's rights when goods become accessions.

(a) Goods are "accessions" when they are installed in or affixed to other goods.

(b) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (d) of this section.

(c) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (d) of this section, but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(d) The interest of a lessor or a lessee under a lease contract described in subsection (b) or (c) of this section is subordinate to the interest of:

(1) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(2) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(e) When under subsections (b) or (c) and (d) of this section, a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or (ii) if necessary to enforce his or her other rights and remedies under this article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal

gives adequate security for the performance of this obligation. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-103.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-311. Priority subject to subordination.

Nothing in this article prevents subordination by agreement by any person entitled to priority. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

Part 4. Performance of Lease Contract: Repudiated, Substituted, and Excused.

§ 28:2A-401. Insecurity: adequate assurance of performance.

(a) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(b) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(c) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(d) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(e) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-402 and 28:2A-403.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-402. Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) Make demand pursuant to § 28:2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) Resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (§ 28:2A-524). (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-508 and 28:2A-529.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-403. Retraction of anticipatory repudiation.

(a) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(b) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under § 28:2A-401.

(c) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-404. Substituted performance.

(a) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(1) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(2) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-405.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-405. Excused performance.

Subject to § 28:2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (2) and (3) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in paragraph (1) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers, not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (2) of this section, of the estimated quota thus made available for the lessee. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-406.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-406. Procedure on excused performance.

(a) If the lessee receives notification of a material or indefinite delay or an allocation justified under § 28:2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (§ 28:2A-510):

(1) Terminate the lease contract (§ 28:2A-505(b)); or

(2) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(b) If, after receipt of a notification from the lessor under § 28:2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-407. Irrevocable promises: finance leases.

(a) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(b) A promise that has become irrevocable and independent under subsection (a) of this section:

(1) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(2) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(c) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-508.

Legislative history of Law 9-128. — See note to § 28:2A-101.

Part 5. Default.

A. In General.

§ 28:2A-501. Default: procedure.

(a) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(b) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(c) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(d) Except as otherwise provided in § 28:1-106 or this article or the lease agreement, the rights and remedies referred to in subsections (b) and (c) of this section are cumulative.

(e) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; May 16, 1995, D.C. Law 10-255, § 22, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 7(d), 42 DCR 1547.)

Section references. — This section is referred to in § 28:2A-303.

Effect of amendments. — D.C. Law 10-255 validated a previously made section reference change in (d).

D.C. Law 11-30 substituted "of this article" for "or this article" in (d). However, effect has not been given to the change by Law 11-30; the technical correction made to (d) by that act would have made an unintended substantive change in the text.

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 10-255. — See note to § 28:2A-303.

Legislative history of Law 11-30. — See note to § 28:2A-209.

§ 28:2A-502. Notice after default.

Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-503. Modification or impairment of rights and remedies.

(a) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(b) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(c) Consequential damages may be liquidated under § 28:2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(d) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-518, 28:2A-519, 28:2A-527, and 28:2A-528.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-504. Liquidation of damages.

(a) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease

agreement, but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(b) If the lease agreement provides for liquidation of damages and the provision does not comply with subsection (a) of this section, or the provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(c) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (§ 28:2A-525 or § 28:2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(1) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (a) of this section; or

(2) In the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of the amount or $500.

(d) A lessee's right to restitution under subsection (c) of this section is subject to offset to the extent the lessor establishes:

(1) A right to recover damages under the provisions of this article other than subsection (a) of this section; and

(2) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-503, 28:2A-518, 28:2A-519, 28:2A-527, and 28:2A-528.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

(a) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(b) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(c) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(d) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(e) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-406, 28:2A-508, and 28:2A-523.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-506. Statute of limitations.

(a) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than 1 year.

(b) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(c) If an action commenced within the time limited by subsection (a) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this article becomes effective. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-507. Proof of market rent: time and place.

(a) Damages based on market rent (§ 28:2A-519 or § 28:2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(b) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(c) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(d) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals

or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

B. Default by Lessor.

§ 28:2A-508. Lessee's remedies.

(a) If a lessor fails to deliver the goods in conformity to the lease contract (§ 28:2A-509) or repudiates the lease contract (§ 28:2A-402), or a lessee rightfully rejects the goods (§ 28:2A-509) or justifiably revokes acceptance of the goods (§ 28:2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (§ 28:2A-510), the lessor is in default under the lease contract and the lessee may:

(1) Cancel the lease contract (§ 28:2A-505(a));

(2) Recover so much of the rent and security as has been paid and is just under the circumstances; or

(3) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (§§ 28:2A-518 and 28:2A-520), or recover damages for nondelivery (§§ 28:2A-519 and 28:2A-520).

(b) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(1) If the goods have been identified, recover them (§ 28:2A-522); or

(2) In a proper case, obtain specific performance or replevy the goods (§ 28:2A-521).

(c) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in § 28:2A-519(c).

(d) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (§ 28:2A-519(d)).

(e) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to § 28:2A-527(e).

(f) Subject to the provisions of § 28:2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-511, 28:2A-512, 28:2A-518, and 28:2A-527.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-509. Lessee's rights on improper delivery; rightful rejection.

(a) Subject to the provisions of § 28:2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(b) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-508 and 28:2A-515.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-510. Installment lease contracts: rejection and default.

(a) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (b) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(b) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-406, 28:2A-508, 28:2A-509, and 28:2A-523.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-511. Merchant lessee's duties as to rightfully rejected goods.

(a) Subject to any security interest of a lessee (§ 28:2A-508(e)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value

speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) If a merchant lessee (subsection (a) of this section) or any other lessee (§ 28:2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(c) In complying with this section or § 28:2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(d) A purchaser who purchases in good faith from a lessee pursuant to this section or § 28:2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this article. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-305 and 28:2A-512.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-512. Lessee's duties as to rightfully rejected goods.

(a) Except as otherwise provided with respect to goods that threaten to decline in value speedily (§ 28:2A-511) and subject to any security interest of a lessee (§ 28:2A-508(e)):

(1) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(2) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in § 28:2A-511; but

(3) The lessee has no further obligations with regard to goods rightfully rejected.

(b) Action by the lessee pursuant to subsection (a) of this section is not acceptance or conversion. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-511.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-513. Cure by lessor of improper tender or delivery; replacement.

(a) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's

intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(b) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-514.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-514. Waiver of lessee's objections.

(a) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(1) If, stated seasonably, the lessor or the supplier could have cured it (§ 28:2A-513); or

(2) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-515. Acceptance of goods.

(a) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods, and

(1) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(2) The lessee fails to make an effective rejection of the goods (§ 28:2A-509(b)).

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(a) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(b) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.

(c) If a tender has been accepted:

(1) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(2) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (§ 28:2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(3) The burden is on the lessee to establish any default.

(d) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(1) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so, that person will be bound in any action against that person by the lessee by any determination of fact common to the 2 litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(2) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (§ 28:2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(e) Subsections (c) and (d) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (§ 28:2A-211). (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-519.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-517. Revocation of acceptance of goods.

(a) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(1) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(2) Without discovery of the nonconformity if the lessee's acceptances was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(b) Except in the case of a financial lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(c) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(d) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(e) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-508.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-518. Cover; substitute goods.

(a) After default by a lessor under the lease contract of the type described in § 28:2A-508(a), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-102(3) and § 28:2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreements, of the rent under the new lease agreement applicable to the period of the new lease which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(c) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected

not to cover and § 28:2A-519 governs. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-508 and 28:2A-519.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-102(c) and 28:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under § 28:2A-518(b), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(b) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(c) Except as otherwise agreed, if the lessee has accepted goods and given notification (§ 28:2A-516(c)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(d) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-507, 28:2A-508, and 28:2A-518.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-520. Lessee's incidental and consequential damages.

(a) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or com-

missions in connection with effecting cover, and any other reasonable expense incident to the default.

(b) Consequential damages resulting from a lessor's default include:

(1) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) Injury to person or property proximately resulting from any breach of warranty. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-508.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-521. Lessee's right to specific performance or replevin.

(a) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(b) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(c) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-508.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-522. Lessee's right to goods on lessor's insolvency.

(a) Subject to subsection (b) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (§ 28:2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(b) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in § 28:2A-508.

Legislative history of Law 9-128. — See note to § 28:2A-101.

C. Default by Lessee.

§ 28:2A-523. Lessor's remedies.

(a) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole,

then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (§ 28:2A-510), the lessee is in default under the lease contract and the lessor may:

(1) Cancel the lease contract (§ 28:2A-505(a));

(2) Proceed respecting goods not identified to the lease contract (§ 28:2A-524);

(3) Withhold delivery of the goods and take possession of goods previously delivered (§ 28:2A-525);

(4) Stop delivery of the goods by any bailee (§ 28:2A-526);

(5) Dispose of the goods and recover damages (§ 28:2A-527), or retain the goods and recover damages (§ 28:2A-528), or in a proper case recover rent (§ 28:2A-529); or

(6) Exercise any other rights or pursue any other remedies provided in the lease contract.

(b) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (a) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(c) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(1) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (a) and (b) of this section; or

(2) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (b) of this section. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-524, 28:2A-525, 28:2A-527, 28:2A-528, and 28:2A-529.

Legislative history of Law 9-128. — See note to § 28:2A-101.

Editor's notes. — The word "or," appearing in D.C. Law 9-128, was deleted from the end of (a)(4).

§ 28:2A-524. Lessor's right to identify goods to lease contract.

(a) A lessor aggrieved under § 28:2A-523(a) may:

(1) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(2) Dispose of goods (§ 28:2A-527(a)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(b) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an

aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-402 and 28:2A-523.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-525. Lessor's right to possession of goods.

(a) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(b) After a default by the lessee under the lease contract of the type described in § 28:2A-523(a) or § 28:2A-523(c)(1) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (§ 28:2A-527).

(c) The lessor may proceed under subsection (b) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 18, 1996, D.C. Law 11-110, § 26, 43 DCR 530.)

Section references. — This section is referred to in §§ 28:2A-504, 28:2A-523, and 28:2A-527.

Effect of amendments. — D.C. Law 11-110 substituted "the lessor has the right" for "the lessee has the right" in the first sentence of (b).

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 28:2A-526. Lessor's stoppage of delivery in transit or otherwise.

(a) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(b) In pursuing its remedies under subsection (a) of this section, the lessor may stop delivery until:

(1) Receipt of the goods by the lessee;

(2) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(3) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(c)(1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(3) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-504, 28:2A-523, and 28:2A-527.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-527. Lessor's rights to dispose of goods.

(a) After a default by a lessee under the lease contract of the type described in § 28:2A-523(a) or § 28:2A-523(c) or after the lessor refuses to deliver or takes possession of goods (§ 28:2A-525 or § 28:2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-102(3) and § 28:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee's default.

(c) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and § 28:2A-528 governs.

(d) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(e) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's

security interest (§ 28:2A-508(e)). (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; July 25, 1995, D.C. Law 11-30, § 7(e), 42 DCR 1547.)

Section references. — This section is referred to in §§ 28:2A-304, 28:2A-508, 28:2A-523, 28:2A-524, 28:2A-525, 28:2A-528, and 28:2A-529.

Effect of amendments. — D.C. Law 11-30 validated a previously made change in the introductory language of (b) and substituted "comparable to the then" for " comparable to the ten" in (b)(ii).

Legislative history of Law 9-128. — See note to § 28:2A-101.

Legislative history of Law 11-30. — See note to § 28:2A-209.

§ 28:2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-102(3) and 28:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under § 28:2A-527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in § 28:2A-523(c)(1), or, if agreed, for other default of the lessee (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee's default.

(b) If the measure of damages provided in subsection (a) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 28:2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:2A-507, 28:2A-523, 28:2A-527, and 28:2A-529.

Legislative history of Law 9-128. — See note to § 28:2A-101.

§ 28:2A-529. Lessor's action for the rent.

(a) After default by the lessee under the lease contract of the type described in § 28:2A-523(a) or § 28:2A-523(c) or, if agreed, after other default by the lessee, if the lessor complies with subsection (b) of this section, the lessor may recover from the lessee as damages:

(1) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially

(b) The Mayor shall prepare and publish materials, data, information, and statistics that relate to the problems of intoxication and alcoholism in the District of Columbia and that may be used in a program of public education directed toward the prevention of the excessive and abusive use of alcoholic beverages.

(c) The Mayor shall develop a comprehensive plan to implement the objectives and policies of this chapter, and in so doing shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health and Human Services. In developing such plan, the Mayor shall make every effort to utilize funds, programs, and facilities authorized under federal legislation. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-533.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Department of Health, Education and Welfare was transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 24-534. Cost of treatment.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, if a person receives care, treatment, or any other services under this chapter: (A) such person (or his estate); and (B) such person's father, mother, spouse, or adult children, shall be liable (each according to his ability, as determined by the Mayor, and in the order listed above) to reimburse the District of Columbia, for all or such part of the actual cost of providing such services, as the Mayor may require. The liability of any person described in clause (B) of this paragraph shall be determined by the Mayor after notice to such person that services have been or will be rendered under this chapter and the Mayor has found that such person is able to reimburse the District of Columbia for all or a part of the cost of providing such services. Such person may not be held liable for the cost of any services rendered more than 90 days prior to the date of issue of such notice. The Mayor shall determine the ability of the person who received services under this chapter (or his estate) or his father, mother, spouse, or adult children, as the case may be, to reimburse the District of Columbia, by an examination conducted under oath. In any one case the Mayor may conduct as many examinations as he determines are necessary to ascertain the ability of such person (or his estate) or his relatives to so reimburse the District of Columbia. In the case of a person committed under § 24-527(a), the Mayor may conduct such examination at any time after a

petition for such person's commitment is filed under such section; and in the case of a person committed under § 24-527(b), such examination may be conducted by the Mayor at any time after the court serves notice of the hearing to be conducted under subsection (b) of such section. In all other cases the Mayor may conduct an examination at any time.

(2) Any person described in clause (B) of paragraph (1) of this subsection who is liable to the District of Columbia under this section may apply to the Mayor to have such liability waived. The Mayor may waive such liability if he determines that it would be unreasonable to impose such liability because of the desertion or neglect of such person by the recipient of services under this chapter or because of other factors similarly affecting the relationship between such person and such recipient. The Mayor shall prescribe procedures for the filing and hearing of such application under this paragraph.

(b) The Mayor may bring an action against a person made liable under subsection (a) of this section for all or any part of the cost of services provided under this chapter to require such person to satisfy such liability. In such an action the court may issue an order requiring any such person who is a party to such action to satisfy such liability in accordance with such terms as the court may prescribe. Such order may be enforced in the same manner as orders for alimony.

(c) Sums collected by the Mayor under this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Aug. 4, 1947, ch. 472, § 14; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-534.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Reimbursement for treatment services provided by District. — See Commissioner's Order No. 74, dated January 31, 1974.

§ 24-535. Donations.

The Mayor may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this chapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975. The Mayor shall use such donations and gifts to carry out the purposes of this chapter. (Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, 82 Stat. 624, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-535; Jan. 22, 1976, D.C. Law 1-42, § 5(b), 22 DCR 6316.)

Cross references. — As to establishment of General Fund, see § 47-131.

Legislative history of Law 1-42. — Law 1-42, the "Revenue Funds Availability Act of 1975," was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975, and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. REHABILITATION OF USERS OF NARCOTICS.

Sec.
24-601. Purpose.
24-602. Definitions.
24-603. Order of examination.
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24-605. Examinations by physicians.
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24-607. Hearing.
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24-610. Periodic examination of released patients.
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24-613. Care and treatment of drug users; authority of Surgeon General.
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24-615. Release of patients.

§ 24-601. Purpose.

The purpose of §§ 24-601 to 24-611 is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that federal criminal laws shall be enforced against drug users as well as other persons, and §§ 24-601 to 24-611 shall not be used to substitute treatment for punishment in cases of crime committed by drug users. (June 24, 1953, 67 Stat. 77, ch. 149, § 2; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; 1973 Ed., § 24-601.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

This chapter is not a criminal statute. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

Government may prosecute criminal offense under federal statute. — The provision of this section that this chapter shall not be used to substitute treatment for punishment in cases of crime committed by drug users means that, when the government is able successfully to prosecute any drug user for a criminal offense under any federal statute, it may do so. United States v. Moore, 486 F.2d 1139 (D.C. Cir.), cert. denied, 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224 (1973).

Congress intended to include juveniles within operation of this chapter. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

Cited in Williams v. United States, App. D.C., 421 A.2d 19 (1980); Grant v. United States, App. D.C., 509 A.2d 1147 (1986).

§ 24-602. Definitions.

For the purpose of §§ 24-601 to 24-611:

(1) The term "drug user" means any person, including a person under 18 years of age, notwithstanding the provisions of Chapter 23 of Title 16, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "narcotic drugs" shall have the same meaning as that given to such term by § 4731 of the Internal Revenue Code of 1954.

(3) The term "patient" means any person ordered to appear before the Mayor, pursuant to the provisions of § 24-603.

(4) The term "Mayor" means the Mayor of the District of Columbia, sitting as a Board, or his designated agent or agents. (June 24, 1953, 67 Stat. 77,

in the alternative, but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove", with respect to a fact, means to meet the burden of establishing the fact (section 28:1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance". Section 28:3-409.
"Accommodated party". Section 28:3-419.
"Accommodation party". Section 28:3-419.
"Alteration". Section 28:3-407.
"Anomalous indorsement". Section 28:3-205.
"Blank indorsement". Section 28:3-205.
"Cashier's check". Section 28:3-104.
"Certificate of deposit". Section 28:3-104.
"Certified check". Section 28:3-409.
"Check". Section 28:3-104.
"Consideration". Section 28:3-303.
"Draft". Section 28:3-104.
"Holder in due course". Section 28:3-302.
"Incomplete instrument". Section 28:3-115.
"Indorsement". Section 28:3-204.
"Indorser". Section 28:3-204.
"Instrument". Section 28:3-104.
"Issue". Section 28:3-105.
"Issuer". Section 28:3-105.
"Negotiable instrument". Section 28:3-104.
"Negotiation". Section 28:3-201.
"Note". Section 28:3-104.
"Payable at a definite time". Section 28:3-108.
"Payable on demand". Section 28:3-108.
"Payable to bearer". Section 28:3-109.

"Payable to order". Section 28:3-109.
"Payment". Section 28:3-602.
"Person entitled to enforce". Section 28:3-301.
"Presentment". Section 28:3-501.
"Reacquisition". Section 28:3-207.
"Special indorsement". Section 28:3-205.
"Teller's check". Section 28:3-104.
"Transfer of instrument". Section 28:3-203.
"Traveler's check". Section 28:3-104.
"Value". Section 28:3-303.

(c) The following definitions in other articles apply to this article:
"Bank". Section 28:4-105.
"Banking day". Section 28:4-104.
"Clearing house". Section 28:4-104.
"Collecting bank". Section 28:4-105.
"Depositary bank". Section 28:4-105.
"Documentary draft". Section 28:4-104.
"Intermediary bank". Section 28:4-105.
"Item". Section 28:4-104.
"Payor bank". Section 28:4-105.
"Suspends payments". Section 28:4-104.

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-102; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-104. Negotiable instrument.

(a) Except as provided in subsections (c) and (d) of this section, the term "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) of this section is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-104; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:2-103, 28:3-103, 28:3-106, 28:3-115, 28:4-104, 28:5-103, and 28:9-105.

Legislative history of Law 10-249. — See note to § 28:3-101.

Note with a variable interest rate tied to the prime rate is not a negotiable instrument because it does not contain "an unconditional promise to pay a sum certain" required by section. Beitzell & Co. v. FDIC, 163 Bankr. 637 (Bankr. D.D.C. 1993).

Money orders which are made "payable to" a named payee and not "payable to order or to bearer" are not negotiable. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

Cited in Clemons v. United States, App. D.C., 400 A.2d 1048 (1979); King v. Industrial Bank, App. D.C., 474 A.2d 151 (1984); In re 1301 Connecticut Ave. Assocs., 126 Bankr. 823 (Bankr. D.D.C. 1991); Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

§ 28:3-105. Issue of instrument.

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. (Mar. 23, 1995, D.C. Law 10-249, § 2(d) 42 DCR 467.)

Section references. — This section is referred to in § 28:3-103.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of section 28:3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 28:3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 28:3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-105; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-107. Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-107; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-608, 24-610, 24-611, and 24-614.

§ 24-610. Periodic examination of released patients.

(a) For 2 years after his release, the patient shall report to the Mayor at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Mayor determines that the person examined is a drug user, he shall then order the patient into an institution in accordance with the provisions of §§ 24-601 to 24-611.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) of this section, the United States Attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of §§ 24-601 to 24-611. (June 24, 1953, 67 Stat. 79, ch. 149, § 11; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101; 1973 Ed., § 24-610.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-611. Patient not deemed a criminal.

The patient in any proceedings under §§ 24-601 to 24-611 shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction. (June 24, 1953, 67 Stat. 79, ch. 149, § 12; July 24, 1956, 70 Stat. 612, ch. 676, title I, § 101; 1973 Ed., § 24-611.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609, 24-610, and 24-614.

This chapter is not a criminal statute. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

§ 24-612. Patient not deemed a criminal.

Omitted.

§ 24-613. Care and treatment of drug users; authority of Surgeon General.

(a) The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-

forming narcotic drugs who are civilly committed to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who voluntarily submit themselves for treatment, and addicts and other persons with drug abuse and drug dependence problems convicted of offenses against the United States and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, including persons convicted by general courts-martial and consular courts. Such care and treatment shall be provided at hospitals of the Public Health Service especially equipped for the accommodation of such patients or elsewhere where authorized under other provisions of law, and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant; but nothing in this section or in §§ 257 to 261a of Title 42, United States Code, shall be construed to limit the authority of the Surgeon General under other provisions of law to provide for the conditional release of patients and for aftercare under supervision. In carrying out this subsection, the Secretary shall establish in each hospital and other appropriate medical facility of the Service a treatment and rehabilitation program for drug addicts and other persons with drug abuse and drug dependence problems who are in the area served by such hospital or other facility; except that the requirement of this sentence shall not apply in the case of any such hospital or other facility with respect to which the Secretary determines that there is not sufficient need for such a program in such hospital or other facility.

(b) Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section, and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Mayor of the District of Columbia or his designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person.

(c) The Secretary may enter into agreements with the Administrator of Veterans' Affairs, the Secretary of Defense, and the head of any other department or agency of the government under which agreements hospitals and other appropriate medical facilities of the Service may be used in treatment and rehabilitation programs provided by such department or agency for drug addicts and other persons with drug abuse and other drug dependence problems who are in areas served by such hospitals or other facilities. (July 1, 1944, 58 Stat. 698, ch. 373, title III, § 341; May 8, 1954, 68 Stat. 80, ch. 195, § 3; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(a); Nov. 8, 1966, 80 Stat. 1449, Pub. L. 89-793, title VI, § 601; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(1); Mar. 21, 1972, 86 Stat. 77, Pub. L. 92-255, § 402; 1973 Ed., § 24-613; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 232(a).)

Section references. — This section is referred to in § 24-615.

References in text. — The Narcotic Addict Rehabilitation Act of 1966, referred to in subsection (a) of this section, is codified in 18 U.S.C. §§ 4251 to 4255, 28 U.S.C. §§ 2901 to 2906, and 42 U.S.C. §§ 3411 to 3426, 3441.

18 U.S.C. §§ 4251 to 4255 were repealed by Pub. L. 98-473, Title II, § 218(a)(6), 98 Stat. 2027 effective November 1, 1987 except that the sections remain applicable for five years to individuals who committed offense or acts prior to November 1, 1987.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

§ 24-614. Admittance into Public Health Service hospitals; narcotics users from District.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Public Health Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with § 248b of Title 42, United States Code, any addict who is committed, under the provisions of §§ 24-601 to 24-611, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless:

(1) He is committed prior to July 1, 1958; and

(2) At the time of his commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than 100; and

(3) Suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) of this section shall be discharged therefrom: (1) upon order of the Superior Court of the District of Columbia; or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of §§ 24-601 to 24-611.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a) of this section, the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) of this section shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may

be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities or the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged. (July 1, 1944, ch. 373, title III, § 345; May 8, 1954, 68 Stat. 80, ch. 195, § 2; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(c); July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(32); 1973 Ed., § 24-614.)

Section references. — This section is referred to in § 24-615.

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

§ 24-615. Release of patients.

For purposes of §§ 24-613 to 24-615, an individual shall be deemed cured of his addiction, drug abuse, or drug dependence and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction, drug abuse, or drug dependence or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service. (July 1, 1944, ch. 373, title III, § 347; May 8, 1954, 68 Stat. 81, ch. 195, § 4; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(4); 1973 Ed., § 24-615.)

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

CHAPTER 7. INTERSTATE AGREEMENT ON DETAINERS.

Sec.
24-701. Enactment.
24-702. Definitions.
24-703. Enforcement and cooperation required of parties.
24-704. Regulations.
24-705. Reservation of authority.

§ 24-701. Enactment.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the form set forth in this section.

The contracting States solemnly agree that:

ARTICLE I

The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any

untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (b) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the

purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further, that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as

an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any

government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

(Dec. 9, 1970, 84 Stat. 1397, Pub. L. 91-538, § 2; 1973 Ed., § 24-701.)

Primary purpose of Interstate Agreement on Detainers is to encourage the expeditious disposition of charges pending against a prisoner in another jurisdiction and consequently to minimize the adverse impact of foreign prosecutions on rehabilitative programs undertaken during incarceration in the original jurisdiction. Gale v. United States, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979).

The primary purpose of this Agreement is to eliminate abuses such as delay in bringing prisoners to trial and interference with rehabilitation programs, which characterized the use of detainers prior to the adoption of the Agreement. Kleinbart v. United States, App. D.C., 426 A.2d 343 (1981).

This Agreement is designed to establish a uniform process for transporting prisoners for trial from a jurisdiction in which they are serving a sentence to a jurisdiction in which they have been charged with an offense. Kleinbart v. United States, App. D.C., 426 A.2d 343 (1981).

Purposes of Agreement are: (1) To minimize interference with a prisoner's treatment and rehabilitation that result from outstanding detainers based upon untried indictments lodged against him during the course of his imprisonment; and (2) to encourage the orderly and expeditious disposition of the criminal charges upon which these detainers are based. Dobson v. United States, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

The principal purpose of the Interstate Agreement on Detainers is to ensure that a sentenced prisoner who has entered into the life of the institution to which he has been committed for a term of imprisonment not have programs of treatment and rehabilitation obstructed by numerous absences in connection with successive proceedings related to pending charges in another jurisdiction. Murray v. District of Columbia, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

Nature of Interstate Agreement. — The Interstate Agreement on Detainers is a compact among the states and the federal government establishing procedures by which one jurisdiction may obtain temporary custody of a prisoner incarcerated in another jurisdiction for trial on outstanding charges. Murray v. District of Columbia, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

The Interstate Agreement on Detainers is a congressionally sanctioned interstate compact, and is therefore considered law of the United States. Murray v. District of Columbia, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

Applicability. — The Interstate Agreement provisions are not applicable to any matters which may be under investigation in which the prisoner may be implicated, or at least those as to which the government may have an active intent to bring formal charges. Parker v. United States, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

This Agreement is not exclusive means of effecting transfer of prisoners between jurisdictions. Kleinbart v. United States, App. D.C., 426 A.2d 343 (1981).

Rights under Agreement can be waived. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979); Hill v. United States, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Where appellant's failure to press for disposition of pending charges was a consequence of his admission of them rather than his ignorance of them, this constituted a waiver of his right to trial within the 180-day period set forth in Article III(a) of this section. Smith v. United States, App. D.C., 470 A.2d 315 (1983), cert. denied, 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344 (1985).

And constitutional standard inapplicable. — The traditional standard for waiver of constitutional rights (a knowing and intelligent waiver) does not apply to waiver of a defendant's statutory right under the Agreement. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Waiver generally. — Absent good cause shown, failure to present a claim under the Interstate Agreement on Detainers at the trial level constitutes a waiver of those rights under Superior Court Criminal Rule 12(d) even if provisions of the IAD were violated, and the

waiver need not be a waiver in fact (i.e., there need not be an intentional relinquishment of a known right) because rights afforded under the IAD are of a class which are inferentially waived if not raised prior to or during trial. Jenkins v. United States, App. D.C., 483 A.2d 660 (1984), cert. denied, 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356 (1985).

A defendant was held to have effectively waived any objections to alleged violations of the Interstate Agreement on Detainers by choosing to go to trial. United States v. Haigler, 113 WLR 1985 (Super. Ct. 1985).

Defendant's failure to raise the issue of his Interstate Agreements on Detainers Act rights prior to or during trial constituted a waiver of those rights. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

Actual inability of receiving jurisdiction to obtain defendant's physical presence renders him unable to stand trial there, equally when due to the custodial jurisdiction's refusal as when due to that jurisdiction's having first delivered the defendant to some third jurisdiction. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

Neither the terms nor the purposes of the Interstate Agreement on Detainers Act would be served by treating defendant as able to stand trial in the District of Columbia while he was in Maryland's custody, nor would those terms or purposes be served by imposing upon the government an obligation to seek defendant's earlier return to the District under circumstances in which the government had no reason to suspect any such obligation, so that while defendant was unable to stand trial within the meaning of Article VI(a) during the entire time he was in Maryland's custody, the 120-day period of Article IV(c) was tolled. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

A prisoner's return to the sending jurisdiction after a brief stay for pretrial proceedings in the receiving jurisdiction did not warrant dismissal of an indictment under Article IV(e) where no interference with the prisoner's rehabilitation program in the sending state had been shown. United States v. Jones, 120 WLR 2441 (Super. Ct. 1992).

Claim that Agreement has been violated should be raised at earliest possible time before the witnesses and the parties have gone to the burden and expense of a trial. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

District not separate sovereign. — The District of Columbia does not acquire the attributes of separate sovereignty by virtue of its being a party to the Interstate Agreement on Detainers. Goode v. Markley, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Nor actual state. — Although Article II of the Agreement includes the District of Columbia within the definition of "state," that is merely a definitional device in which the legislature indulged as a matter of convenience and by no means transforms the District of Columbia into an actual state. Goode v. Markley, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Obligation of receiving jurisdiction to bring individual to trial. — Only when a person has entered upon a term of imprisonment in a penal or correctional institution is a jurisdiction that receives that individual pursuant to a detainer and a written request for custody under an obligation to bring that individual to trial within the time limits of the Interstate Agreement on Detainers Act. Bean v. United States, App. D.C., 409 A.2d 1064 (1979).

Notice to prisoner sufficient though not in compliance with Article III(c). — Written notice of a detainer, even though it did not strictly comply with the notification provision of Article III(c), was sufficient and was received promptly enough to impose the burden of substantial compliance with the Agreement on the prisoner, who was obliged to direct a written request for a speedy trial to the District in order to trigger the 180-day period. McBride v. United States, App. D.C., 393 A.2d 123 (1978), cert. denied, 440 U.S. 927, 99 S. Ct. 1260, 59 L. Ed. 2d 482 (1979).

Purpose of Article IV(e). — Article IV(e) was designed to promote the speedy disposition of outstanding charges and to avoid shuttling back and forth between jurisdictions and disrupting consistent treatment programs. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979); Hill v. United States, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Prisoner's right under Article IV(e) neither fundamental nor constitutional. — The right of a prisoner under Article IV(e) not to be transferred back to his original place of imprisonment before he is tried is neither fundamental nor constitutional. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

And normally waived if not asserted at trial. — Absent a miscarriage of justice, an error seriously affecting the status of the judicial system, or good cause shown, the failure to present a claim under Article IV(e) at the trial level constitutes a waiver of those rights under Super. Ct. Cr. R. 12(d). Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

One hundred eighty-day period held properly tolled under Article III(a). — See Baylor v. United States, App. D.C., 500 A.2d 1012 (1985).

Application of speedy trial limitation where prisoner initiates request for final disposition. — The 180-day limitation, rather than the 120-day limitation on speedy trial under the Interstate Agreement on Detainers Act (IAD), applies whenever the prisoner initiates the request for a final disposition of charges, irrespective of the means by which custody of the prisoner is obtained. Felix v. United States, App. D.C., 508 A.2d 101 (1986).

Thirty-day period of Article IV(a) is maximum period for state's action on a request following a detainer and not a minimum period during which a state cannot yield custody. Dobson v. United States, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

Applicability of Article IV(c) 120-day limit to multiple trials based on single indictment. — Where custody has been obtained under a single indictment but multiple trials are held under a defendant's motion for severance, the 120-day limit of Article IV(c) of the Interstate Agreement on Detainers is not violated when at least 1 trial is held within the statutory period and the others are begun within a reasonable time. Sonneville v. Stedef, Inc., App. D.C., 449 A.2d 1087 (1982).

Prejudice not required. — A requirement of prejudice is found neither in the agreement nor in its interpretations. Haigler v. United States, App. D.C., 531 A.2d 1236 (1987).

"Complaint" defined. — The coupling of the word "complaint" with indictment and information is a solid indication that "complaint" refers to a formal document of some type initiating criminal action against an individual, and not inchoate matters with respect to which no court proceedings of any sort have been initiated. Parker v. United States, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Continuances. — The government has an affirmative duty to make a record on the question of whether continuances have been granted for good cause in keeping with Article IV(c) of this section. Haigler v. United States, App. D.C., 531 A.2d 1236 (1987).

In order for continuances granted due to court congestion to constitute continuances granted for "good cause," there must be documented or recorded evidence that the trial court took affirmative steps to try the defendant within the applicable time limits. Haigler v. United States, App. D.C., 531 A.2d 1236 (1987).

Article IV inapplicable to final proceedings on parole revocation. — A prisoner awaiting final proceedings on revocation of parole is not entitled to the protection of Article IV. Hill v. United States, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Mandatory action under Article V(a). — Article V(a) of the Agreement sets forth the mandatory action to be taken by the sending state once a proper request for transfer has been made. Vance v. United States, App. D.C., 399 A.2d 52 (1979).

Meaning of detainer. — A detainer is not a demand for the immediate surrender of a prisoner but only a request from the official lodging the detainee that he be notified before the inmate is released from custody. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

A detainer under the Agreement generally refers to a document filed on an untried indictment, information, or complaint. Goode v. Markley, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

A detainer is a notification filed with the institution in which a prisoner is serving a sentence advising that he is wanted to face pending criminal charges in another jurisdiction. Dobson v. United States, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

Jurisdiction of receiving state. — When the original count for which a detainer was lodged, and defendant's delivery obtained, was dismissed, the provisions of Art. V(d) and (e) did not deprive the District's court of jurisdiction over 5 additional counts on which the defendant was indicted after his delivery to the District. Parker v. United States, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Obligation to return prisoner to sending state. — Where defendant's presence depended upon the Interstate Agreement, the District was under obligation to return defendant to Maryland once it had dismissed the charges upon which the detainer was based, at least upon the request of either the prisoner or the sending state. Parker v. United States, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Lodging of detainer. — An outstanding indictment in another state generates no Art. III rights in and of itself; the key is the lodging of a detainer based on that untried indictment. Parker v. United States, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Arrest warrant as detainer. — Under this section, an arrest warrant will serve as a detainer within the purview of the Interstate Agreement on Detainers (IAD) if: (1) it is based on an untried information, indictment, or com-

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-305. Defenses and claims in recoupment.

(a) Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this section or claims in recoupment stated in subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 28:3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does

not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-207.

Legislative history of Law 10-249. — See note to § 28:3-101.

Recovery permitted notwithstanding fraud. — A holder of a note, who obtained it from a holder in due course, could recover on the note notwithstanding alleged fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

Bank took note free from maker's defenses. — Since the bank, to which payee endorsed and delivered the note, had holder in due course status, the bank which sued the maker and the payee, took note free of maker's defenses asserted against the payee. Millman v. State Nat'l Bank, App. D.C., 323 A.2d 723 (1974).

Bank's status limited to amount withdrawn. — A bank is a holder in due course as to the amount of provisional credit permitted in a customer withdrawn on a check, and, absent the defenses as provided in this section, could recover from the drawer. Falls Church Bank v. Wesley Heights Realty, Inc., App. D.C., 256 A.2d 915 (1969).

§ 28:3-306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. (Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1; 1973 Ed., §§ 28:3-305, 28:3-306; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-302 and 28:3-602.

Legislative history of Law 10-249. — See note to § 28:3-101.

Recovery permitted notwithstanding fraud. — A holder of a note, who obtained it from a holder in due course, could recover on the note notwithstanding alleged fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

Transfer of nonnegotiable money orders. — The transferee of nonnegotiable money orders, although not a holder in due course, could establish a case against a payor who had stopped payment on them, by the production of the instruments and by indicating that the burden of proving any defense is upon the payor. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

Cited in Biggs v. Stewart, App. D.C., 361 A.2d 159 (1976).

§ 28:3-307. Notice of breach of fiduciary duty.

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer, or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of this subsection is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-304; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-308. Proof of signatures and status as holder in due course.

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 28:3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 28:3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim. (Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-307; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 18, 1996, D.C. Law 11-110, § 27(a), 43 DCR 530.)

Section references. — This section is referred to in § 28:3-309.

Effect of amendments. — D.C. Law 11-110 substituted "of this section" for "of this subsection" in the first sentence in (b).

Legislative history of Law 10-249. — See note to § 28:3-101.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 5, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Evidence required to establish defense. — The defenses of failure of consideration, fraud, and usury raised by the signer of note in his pleading did not constitute "establishment of a defense" without the introduction of some evidence. Calvert Credit Corp. v. Humble, App. D.C., 249 A.2d 518 (1969).

Section applies to suit on notes even though the transaction took place prior to the effective date of this section. Toomey v. Cammack, App. D.C., 345 A.2d 453 (1975).

Burden to prove holder in due course. — The burden is on holder of a purchase price note, to prove that he was in all respects a holder in due course. United Sec. Corp. v. Bruton, App. D.C., 213 A.2d 892 (1965).

Nonnegotiable money orders. — In a case where the payee transferred nonnegotiable money orders, the transferee, although not a holder in due course, could establish a case against the payor, by producing the instruments and proving want of consideration or any other defense upon the payor. Nation-Wide Check Corp. v. Banks, App. D.C., 260 A.2d 367 (1969).

Recovery permitted notwithstanding fraud. — Holder of a note, who obtained note from holder in due course, could recover on note notwithstanding fraud. Blow v. Ammerman, 350 F.2d 729 (D.C. Cir. 1965).

§ 28:3-309. Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 28:3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately

protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-301.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-310. Effect of instrument on obligation for which taken.

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4) of this subsection, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) of this section is taken for an obligation, the effect is (i) that stated in subsection (a) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) of this section in any other case. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-802; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:2-511.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-311. Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i) of this subsection.

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Part 4. Liability of Parties.

§ 28:3-401. Signature.

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 28:3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present

intention to authenticate a writing. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-401; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-102.

Legislative history of Law 10-249. — See note to § 28:3-101.

Suit to assume deed of trust. — Bona fide assignee of rights under a deed of trust which was evidenced by a note can sue the purchasers directly on their contract to assume the deed of trust, even though they could not be held liable on the instrument itself without their signatures. City Mtg. Inv. Club v. Beh, App. D.C., 334 A.2d 183 (1975).

Cited in Yasuna v. Miller, App. D.C., 399 A.2d 68 (1979); American Sec. Bank v. American Motorists Ins. Co., App. D.C., 538 A.2d 736 (1988).

§ 28:3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c) of this section, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Parol evidence to determine facial ambiguity in note. — Where a note indicates that a corporation promised to pay the note, and an individual's signature appears just below the corporation's name in the signature block, is not succeeded by an office, and is preceded by the preposition "by," a facial ambiguity exists which warrants the introduction of parol evidence to determine whether the individual signed in a representative capacity. Chidakel v. Blonder, App. D.C., 431 A.2d 594 (1981).

§ 28:3-403. Unauthorized signature.

(a) Unless otherwise provided in this article or article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-404; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-404. Impostors; fictitious payees.

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (section 28:3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b) of this section, an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1; 1973

Ed., § 28:3-405; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 18, 1996, D.C. Law 11-110, § 27(b), 43 DCR 530.)

Section references. — This section is referred to in §§ 28:3-417 and 28:4-208.

Effect of amendments. — D.C. Law 11-110 substituted "of this section" for "of this subsection" in (c).

Legislative history of Law 10-249. — See note to § 28:3-101.

Legislative history of Law 11-110. — See note to § 28:3-308.

§ 28:3-405. Employer's responsibility for fraudulent indorsement by employee.

(a) In this section, the term:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. The term "responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b) of this section, an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name

substantially similar to the name of that person. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-406. Negligence contributing to forged signature or alteration of instrument.

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-406; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-417 and 28:4-208.

Legislative history of Law 10-249. — See note to § 28:3-101.

Negligence precludes challenge of bank payment. — Depositor's negligence as a matter of law in failing to inquire of bank as to her lack of receipt of monthly statements and cancelled checks, after the bank informed her that their records showed no money in her account, substantially contributed to the making of an unauthorized signature and depositor was precluded from asserting a lack of the bank's authority to pay allegedly forged checks. Myrick v. National Sav. & Trust Co., App. D.C., 268 A.2d 526 (1970).

Negligence of drawee bank in handling of check barred its claim against presenting bank which paid the check in good faith and without notice of unauthorized signatures. Fidelity Bank v. United Nat'l Bank, 630 F. Supp. 16 (D.D.C. 1985).

Absence of indorsement. — Where it is assumed that the absence of any indorsement is a "forged indorsement" within the meaning of former § 28:3-419(1)(c) (see now § 28:3-420), a similar reading must apply to the term "unauthorized signature" in this section. Kuwait Airways Corp. v. American Sec. Bank, 890 F.2d 456 (D.C. Cir. 1989).

Bank foreclosed from asserting customer's negligence as defense. — Where bank did not exercise reasonable commercial standards and it failed to detect forgeries and paid forged checks, it was foreclosed from asserting as a defense the negligence of its customer in contributing to the forgeries. American Sec. Bank v. American Motorists Ins. Co., App. D.C., 538 A.2d 736 (1988).

Cited in American Mach. Tool Distribs. Ass'n v. National Permanent Fed. Sav. & Loan Ass'n, App. D.C., 464 A.2d 907 (1983).

§ 28:3-407. Alteration.

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an

unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-407; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-102, 28:3-103, 28:3-115, 28:3-412, 28:-3-413, 28:3-414, 28:3-415, 28:4-104, and 28:4-207.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-408. Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-409; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-409. Acceptance of draft; certified check.

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) of this section, or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-410; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-410. Acceptance varying draft.

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-412; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-411. Refusal to pay cashier's checks, teller's checks, and certified checks.

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) of this section are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-411; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-102.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-412. Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when com-

pleted, to the extent stated in sections 28:3-115 and 28:3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 28:3-415. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-413. Obligation of acceptor.

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 28:3-115 and 28:3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 28:3-414 or 28:3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-413; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Cited in In re Hessler, App. D.C., 549 A.2d 700 (1988).

§ 28:3-414. Obligation of drawer.

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 28:3-115 and 28:3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 28:3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under section 28:3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under

subsection (b) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) of this section is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-415. Obligation of indorser.

(a) Subject to subsections (b), (c), (d), and (e) of this section and section 28:3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 28:3-115 and 28:3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) of this section to pay the instrument.

(c) If notice of dishonor of an instrument is required by section 28:3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) of this section is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) of this section is discharged.

(e) If an indorser of a check is liable under subsection (a) of this section and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) of this section is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-414; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-413 and 28:3-503.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-416; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Ancillary guaranties. — This section is applicable to guaranties that are ancillary to the instrument in question, and part of the same transaction. Cusimano v. First Maryland Savs. & Loan, Inc., App. D.C., 639 A.2d 553 (1994).

Language confirmed guarantee rather than collection. — Where guarantee stated "we, the undersigned, do hereby personally guaranteed [sic] the due payment of the within indebtedness" payment was guaranteed rather than collection. Cusimano v. First Maryland Savs. & Loan, Inc., App. D.C., 639 A.2d 553 (1994).

Transferee entitled to warranty. — Although, with respect to unenforceability of note endorsed "without recourse" because of illegality of underlying loan, transferee had full knowledge of same facts as its transferor he did not subjectively know when it accepted the note that a good defense existed against it, and thus was entitled to coverage of warranty. Hartford Life Ins. Co. v. Title Guarantee Co., 520 F.2d 1170 (D.C. Cir. 1975).

§ 28:3-417. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28:3-404 or 28:3-405 or the drawer is precluded under section 28:3-406 or 28:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-417; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-418.

Legislative history of Law 10-249. — See note to § 28:3-101.

Transferee entitled to warranty. — Although, with respect to unenforceability of note endorsed "without recourse" because of illegality of underlying loan, transferee had full knowledge of same facts as its transferor he did not subjectively know when it accepted the note that a good defense existed against it, and thus was entitled to coverage of warranty. Hartford Life Ins. Co. v. Title Guarantee Co., 520 F.2d 1170 (D.C. Cir. 1975).

§ 28:3-418. Payment or acceptance by mistake.

(a) Except as provided in subsection (c) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 28:4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 28:3-417 or 28:4-407.

(d) Notwithstanding section 28:4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-418; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-301.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-419. Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words

indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 28:3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party. (Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-420. Conversion of instrument.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-419; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-203.

Legislative history of Law 10-249. — See note to § 28:3-101.

Absence of indorsement. — Where it is assumed that the absence of any indorsement is a "forged indorsement" within the meaning of former paragraph (1)(c) of this section, a simi-

lar reading must apply to the term "unauthorized signature" in § 28:3-406. Kuwait Airways Corp. v. American Sec. Bank, 890 F.2d 456 (D.C. Cir. 1989).

Commercial reasonableness. — Commercial reasonableness is a question of fact for the jury, and is not an issue to be decided as a matter of law. Kuwait Airways Corp. v. American Sec. Bank, 890 F.2d 456 (D.C. Cir. 1989).

Defenses. — A depositary bank that has not acted in a commercially reasonable manner in taking checks over forged indorsements may have available to it the defenses of ratification and apparent authority. Kuwait Airways Corp. v. American Sec. Bank, 890 F.2d 456 (D.C. Cir. 1989).

Part 5. Dishonor.

§ 28:3-501. Presentment.

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of 2 or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 5; 1973 Ed., § 28:3-501; Mar. 16, 1982, D.C. Law 4-85, § 6, 29 DCR 309; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-103, 28:4-104, and 28:4-212.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council

and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-502. Dishonor.

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 28:4-301 or 28:4-302, or becomes accountable for the amount of the check under section 28:4-302.

(2) If a draft is payable on demand and paragraph (1) of this subsection does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4) of this section, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 28:3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-507; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-503. Notice of dishonor.

(a) The obligation of an indorser stated in section 28:3-415(a) and the obligation of a drawer stated in section 28:3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under section 28:3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to section 28:3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-508; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-504. Excused presentment and notice of dishonor.

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed

the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-511; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-505. Evidence of dishonor.

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) of this section which purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-510; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Part 6. Discharge and Payment.

§ 28:3-601. Discharge and effect of discharge.

(a) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge. (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-601; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-602. Payment.

(a) Subject to subsection (b) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 28:3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:

(1) A claim to the instrument under section 28:3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument. (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-603; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-603. Tender of payment.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the

instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-604; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-604. Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement. (Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-605; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

§ 28:3-605. Discharge of indorsers and accommodation parties.

(a) In this section, the term "indorser" includes a drawer having the obligation described in section 28:3-414(d).

(b) Discharge, under section 28:3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss

caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 28:3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. (Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-606; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:3-101.

Prior law unchanged. — This section does not represent any change from the law applicable prior to the adoption of the Uniform Commercial Code in the District of Columbia. Yasuna v. Miller, App. D.C., 399 A.2d 68 (1979).

Common law altered. — This section appears to have altered the common-law rule that the terms of a note cannot be altered by an agreement with a third person not a party to the instrument. Yasuna v. Miller, App. D.C., 399 A.2d 68 (1979).

Article 4. Bank Deposits and Collections.

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28:4-502. Presentment of "on arrival" drafts.
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28:4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

Revision of article. — D.C. Law 10-249 revised this article. In addition to revisions in the text of the article, former §§ 28:4-106 through 28:4-108 and 28:4-208 through 28:4-214 were transferred to be present §§ 28:4-107 through 28:4-109 and §§ 28:4-209 through 28:4-216, respectively and present §§ 28:4-106, 28:4-110 and 28:4-111 were added. Otherwise, no detailed explanation of the changes made by D.C. Law 10-249 has been attempted, but, where appropriate, historical citations to the former sections have been added to correspond-

ing sections in the revised article.

Many of the cases appearing in the notes to this article were decided under the former statutes in effect prior to the 1995 revision. These earlier cases have been moved to pertinent sections of the revised material where they may be useful in interpreting the current statutes.

Part 1. General Provisions and Definitions.

§ 28:4-101. Short title.

This article may be cited as "Uniform Commercial Code — Bank Deposits and Collections". (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-101; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — Law 10-249, the "Uniform Commercial Code—Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

§ 28:4-102. Applicability.

(a) To the extent that items within this article are also within articles 3 and 8, they are subject to those articles. If there is conflict, this article governs article 3, but article 8 governs this article.

(b) The liability of a bank for action or nonaction with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-102; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:1-105.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-103. Variation by agreement; measure of damages; action constituting ordinary care.

(a) The effect of the provisions of this article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a) of this section, whether or not specifically assented to by all parties interested in items handled.

(c) Action or nonaction approved by this article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-103; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-104. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires, the term:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of a day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearing house" means an association of banks or other payors regularly clearing, items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28:8-102) or instructions for uncertificated securities (section 28:8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in section 28:3-104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4A or a credit or debit card slip.

(10) "Midnight deadline", with respect to a bank, means midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) "Suspends payments", with respect to a bank, means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment". Section 28:4-110.
"Bank". Section 28:4-105.
"Collecting bank". Section 28:4-105.
"Depositary bank". Section 28:4-105.
"Intermediary bank". Section 28:4-105.
"Payor bank". Section 28:4-105.
"Presenting bank". Section 28:4-105.
"Presentment notice". Section 28:4-110.

(c) The following definitions in other articles apply to this article:

"Acceptance". Section 28:3-409.
"Alteration". Section 28:3-407.
"Cashier's check". Section 28:3-104.
"Certificate of deposit". Section 28:3-104.
"Certified check". Section 28:3-409.
"Check". Section 28:3-104.
"Good faith". Section 28:3-103.
"Holder in due course". Section 28:3-302.
"Instrument". Section 28:3-104.
"Notice of dishonor". Section 28:3-503.
"Order". Section 28:3-103.
"Ordinary care". Section 28:3-103.
"Person entitled to enforce". Section 28:3-301.
"Presentment". Section 28:3-501.
"Promise". Section 28:3-103.
"Prove". Section 28:3-103.
"Teller's check". Section 28:3-104.
"Unauthorized signature". Section 28:3-403.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 696, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-104; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-103, 28:4A-105, and 28:5-103.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-105. "Bank"; "depositary bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank".

In this article, the term:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) "Payor bank" means a bank that is the drawee of a draft.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank.

(5) "Collecting bank" means a bank handling an item for collection except the payor bank.

(6) "Presenting bank" means a bank presenting an item except a payor bank. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-105; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-103, 28:4-104, and 28:8-102.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-106. Payable through or payable at bank; collecting bank.

(a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank. (Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-107. Separate office of bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or orders must be given under this article and under article 3. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-106; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-108. Time of receipt of items.

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-107; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-109. Delays.

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this article for a period not exceeding 2 additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this article or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-108; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-110. Electronic presentment.

(a) "Agreement for electronic presentment" means an agreement, clearinghouse rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this article means the presentment notice unless the context otherwise indicates. (Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-104.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-111. Statute of limitations.

An action to enforce an obligation, duty, or right arising under this article must be commenced within 3 years after the cause of action accrues. (Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

Part 2. Collection of Items: Depositary and Collecting Banks.

§ 28:4-201. Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank".

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank. (Dec. 30, 1963, 77 Stat. 698, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-201; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-206.

Legislative history of Law 10-249. — See note to § 28:4-101.

Bank's status limited to amount withdrawn. — A bank is a holder in due course as to the amount of provisional credit permitted a customer and withdrawn on a check. Falls Church Bank v. Wesley Heights Realty, Inc., App. D.C., 256 A.2d 915 (1969).

§ 28:4-202. Responsibility for collection or return; when action timely.

(a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or nonpayment, or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit. (Dec. 30, 1963, 77 Stat. 698, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-202; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-203. Effect of instructions.

Subject to article 3 concerning conversion of instruments (section 28:3-420) and restrictive indorsements (section 28:3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-203; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-204. Methods of sending and presenting; sending directly to payor bank.

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a nonbank payor if authorized by its transferor; and

(3) An item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made. (Dec. 30,

1963, 77 Stat. 699, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-204; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-205. Depositary bank holder of unindorsed item.

If a customer delivers an item to a depositary bank for collection:

(1) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of section 28:3-302, it is a holder in due course; and

(2) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-205; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-206. Transfer between banks.

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-206; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (section 28:3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its

terms when completed as stated in sections 28:3-115 and 28:3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-207; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28:3-404 or 28:3-405 or the drawer is precluded under section 28:3-406 or 28:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. (Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-302.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-209. Encoding and retention warranties.

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach. (Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (section 28:9-203(1)(a));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. (Dec. 30, 1963, 77 Stat. 700, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-208; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

Bank's status limited to amount withdrawn. — A bank is a holder in due course as to the amount of provisional credit permitted a customer and withdrawn on a check. Falls Church Bank v. Wesley Heights Realty, Inc., App. D.C., 256 A.2d 915 (1969).

Restraining order as valid attachment. — Although bank cashed husband's checks without having notice of wife's claim to the funds, the wife has a prior claim to funds in his account and a temporary restraining order obtained by her is a valid attachment. Trigo v. Riggs Nat'l Bank, App. D.C., 338 A.2d 445 (1975).

Untimely presentment. — Where drawee bank did not notify presenting bank of forged endorsements until 46 days after presentment because of inadequate internal verification procedures, the notice was not within a reasonable time as required by this section. Fidelity Bank v. United Nat'l Bank, 630 F. Supp. 16 (D.D.C. 1985).

§ 28:4-211. When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of section 28:3-302 on what constitutes a holder in due course. (Dec. 30, 1963, 77 Stat. 700, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-209; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 28:3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 28:3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-210; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-213. Medium and time of settlement by bank.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(A) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(B) With respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;

(C) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(D) With respect to tender of settlement by a funds transfer, when payment is made pursuant to section 28:4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a) of this section, no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-211; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

Restraining order as valid attachment. — Although bank cashed husband's checks without having notice of wife's claim to the funds, the wife has a prior claim to funds in his account and a temporary restraining order obtained by her is a valid attachment. Trigo v. Riggs Nat'l Bank, App. D.C., 338 A.2d 445 (1975).

Bank limited to amount of provisional credit withdrawn. — Depository bank could recover from drawers where it gave its customer provisional credit on a check and permitted him to withdraw a portion of the credit before the bank discovered that the drawers had stopped payment. Falls Church Bank v. Wesley Heights Realty, Inc., App. D.C., 256 A.2d 915 (1969).

§ 28:4-214. Right of charge-back or refund; liability of collecting bank; return of item.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 28:4-301).

(d) The right to charge back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. (Dec. 30, 1963, 77 Stat. 702, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-212; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or

(2) If the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-213; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-418.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-216. Insolvency and preference.

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-214; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

Part 3. Collection of Items: Payor Banks.

§ 28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) Returns the item; or

(2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when, for purposes of dishonor, it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions. (Dec. 30, 1963, 77 Stat. 704, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-301; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-502 and 28:4-214.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-302. Payor bank's responsibility for late return of item.

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of a presentment warranty (section 28:4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank. (Dec. 30, 1963, 77 Stat. 704, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-302; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-502 and 28:4-303.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its

customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under section 28:4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) of this section, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-303; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:4-401 and 28:4-403.

Legislative history of Law 10-249. — See note to § 28:4-101.

Restraining order as valid attachment. — Although bank cashed husband's checks without having notice of wife's claim to the funds, the wife has a prior claim to funds in his account and a temporary restraining order obtained by her is a valid attachment. Trigo v. Riggs Nat'l Bank, App. D.C., 338 A.2d 445 (1975).

Bank's right to setoff must be exercised after notice of threat of attachment and before levy. Baltimore & Assocs. v. Municipal Escrow & Title Co., 625 F. Supp. 1271 (D.D.C. 1985).

Bank may not dishonor its cashier's check even though it receives knowledge, after check has been accepted through issuance, that check was issued due to fraud or lack of consideration. Da Silva v. Sanders, 600 F. Supp. 1008 (D.D.C. 1984), but see, F & M State Bank v. Western Bank, 841 F.2d 1433 (9th Cir. 1987).

Part 4. Relationship Between Payor Bank and Its Customers.

§ 28:4-401. When bank may charge customer's account.

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 28:4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 28:4-303. If a bank charges against the

account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 28:4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-401; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-113.

Legislative history of Law 10-249. — See note to § 28:4-101.

Payment of overdrafts. — The proper payment of an overdraft by the bank carries with it an implicit agreement by the customer to repay the loan. Sayan v. Riggs Nat'l Bank, App. D.C., 544 A.2d 267 (1988).

§ 28:4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-402; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:4-401 and 28:4-403.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-403. Customer's right to stop payment; burden of proof of loss.

(a) A customer, or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 28:4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 28:4-402. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-403; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:4-401.

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-404. Bank not obliged to pay check more than 6 months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-404; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-405. Death or incompetence of customer.

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-405; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-406. Customer's duty to discover and report unauthorized signature or alteration.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c) of this section, the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to

which the failure of the customer to comply with subsection (c) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) of this section does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection (a) of this section) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 28:4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-406; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in §§ 28:3-417 and 28:4-208.

Legislative history of Law 10-249. — See note to § 28:4-101.

General contract principles govern. — Where the Uniform Commercial Code does not apply to a precise situation, general contract principles governed. G & R Corp. v. American Sec. & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975).

This section applies to savings account withdrawal slips. Boutros v. Riggs Nat'l Bank, 655 F.2d 1257 (D.C. Cir. 1981).

Bank foreclosed from asserting customer's negligence as defense. — Where bank did not exercise reasonable commercial standards and where it failed to detect forgeries and paid forged checks, it was foreclosed from asserting as a defense the negligence of its customer in contributing to the forgeries. American Sec. Bank v. American Motorists Ins. Co., App. D.C., 538 A.2d 736 (1988).

Cited in National Union Fire Ins. Co. v. Riggs Nat'l Bank , 5 F.3d 554 (D.C. Cir. 1993).

§ 28:4-407. Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker;

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-407; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Section references. — This section is referred to in § 28:3-418.

Legislative history of Law 10-249. — See note to § 28:4-101.

Part 5. Collection of Documentary Drafts.

§ 28:4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-501; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-502. Presentment of "on arrival" drafts.

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive", or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or it learns of the arrival of the goods. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-502; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

Unless otherwise instructed and except as provided in article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any

expense incurred in following instructions and to prepayment of or indemnity for those expenses. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-503; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

§ 28:4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; 1973 Ed., § 28:4-504; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467.)

Legislative history of Law 10-249. — See note to § 28:4-101.

ARTICLE 4A. FUNDS TRANSFERS.

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Part 1. Subject Matter and Definitions.

§ 28:4A-101. Short title.

This article may be cited as "Uniform Commercial Code — Funds Transfers." (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — Law 9-95, the "District of Columbia Uniform Commercial Code — Funds Transfers Act of 1992," was introduced in Council and assigned Bill No. 9-32, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 7, 1992, and February 4, 1992, respectively. Signed by the Mayor on March 2, 1992, it was assigned Act No. 9-165 and transmitted to both Houses of Congress for its review. D.C. Law 9-95 became effective on April 30, 1992.

§ 28:4A-102. Subject matter.

Except as otherwise provided in § 28:4A-108, this article applies to funds transfers defined in § 28:4A-104. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-103. Payment order — definitions.

(a) In this article:

(1) "Beneficiary" means the person to be paid by the beneficiary's bank.

(2) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(3) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(A) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(B) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(C) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(3) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-104. Funds transfer — definitions.

In this article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-102 and 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-105. Other definitions.

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 28:1-201(8)).

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance"	§ 28:4A-209
"Beneficiary"	§ 28:4A-103
"Beneficiary's bank"	§ 28:4A-103
"Executed"	§ 28:4A-301
"Execution date"	§ 28:4A-301
"Funds transfer"	§ 28:4A-104
"Funds-transfer system rule"	§ 28:4A-501

"Intermediary bank"	§ 28:4A-104
"Originator"	§ 28:4A-104
"Originator's bank"	§ 28:4A-104
"Payment by beneficiary's bank to beneficiary"	§ 28:4A-405
"Payment by originator to beneficiary"	§ 28:4A-406
"Payment by sender to receiving bank"	§ 28:4A-403
"Payment date"	§ 28:4A-401
"Payment order"	§ 28:4A-103
"Receiving bank"	§ 28:4A-103
"Security procedure"	§ 28:4A-201
"Sender"	§ 28:4A-103

(c) The following definitions in Article 4 apply to this article:

"Clearing house"	§ 28:4-104
"Item"	§ 28:4-104
"Suspends payments"	§ 28:4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in § 28:1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-107. Federal Reserve regulations and operating circulars.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this article to the extent of the inconsistency. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-108. Exclusion of consumer transactions governed by federal law.

This article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 *et seq.*) as amended from time to time. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-102.

Legislative history of Law 9-95. — See note to § 28:4A-101.

Part 2. Issue and Acceptance of Payment Order.

§ 28:4A-201. Security procedure.

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-202. Authorized and verified payment orders.

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing

security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a) of this section, or it is effective as the order of the customer under subsection (b) of this section.

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in § 28:4A-203(a)(1), rights and obligations arising under this section or § 28:4A-203 may not be varied by agreement. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-203 and 28:4A-204.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-203. Unenforceability of certain verified payment orders.

(a) If an accepted payment order is not, under § 28:4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to § 28:4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of

how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-202 and 28:4A-204.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under § 28:4A-202, or (ii) not enforceable, in whole or in part, against the customer under § 28:4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in § 28:1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-205. Erroneous payment orders.

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to § 28:4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3) of this subsection.

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a) of this section, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a) of this section, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) of this section is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-206. Transmission of payment order through funds-transfer or other communication system.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-205.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-207. Misdescription of beneficiary.

(a) Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) of this section is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1) of this section, the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c) of this section, the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-208. Misdescription of intermediary bank or beneficiary's bank.

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1) of this section, as though the sender were a bank. Proof of notice may be made by an admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in § 28:4A-302(a)(1). (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-209. Acceptance of payment order.

(a) Subject to subsection (d) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in § 28:4A-405(a) or § 28:4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's order pursuant to § 28:4A-403(a)(1) or § 28:4A-403(a)(2); or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently cancelled pursuant to § 28:4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-105 and 28:4A-212.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-210. Rejection of payment order.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to § 28:4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-211. Cancellation and amendment of payment order.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a) of this section, a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is cancelled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is cancelled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A cancelled payment order cannot be accepted. If an accepted payment order is cancelled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2) of this section. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-209, 28:4A-210, 28:4A-404, and 28:4A-406.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-212. Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in § 28:4A-209, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

Part 3. Execution of Sender's Payment Order by Receiving Bank.

§ 28:4A-301. Execution and execution date.

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-302. Obligations of receiving bank in execution of payment order.

(a) Except as provided in subsections (b) through (d) of this section, if the receiving bank accepts a payment order pursuant to § 28:4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to

be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-208, 28:4A-305, and 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-303. Erroneous execution of payment order.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then

issues a duplicate order, is entitled to payment of the amount of the sender's order under § 28:4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under § 28:4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-304 and 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-304. Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in § 28:4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under § 28:4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595).)

Section references. — This section is referred to in § 28:4A-402.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-305. Liability for late or improper execution or failure to execute payment order.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of § 28:4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of § 28:4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a) of this section, resulting from the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) of this section is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

Part 4. Payment.

§ 28:4A-401. Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than

the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-402. Obligation of sender to pay receiving bank.

(a) This section is subject to §§ 28:4A-205 and 28:4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) of this section and to § 28:4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in §§ 28:4A-204 and 28:4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) of this section and an intermediary bank is obliged to refund payment as stated in subsection (d) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in § 28:4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) of this section or to receive refund under subsection (d) of this section may not be varied by agreement. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-303, 28:4A-304, 28:4A-403, and 28:4A-405.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-403. Payment by sender to receiving bank.

(a) Payment of the sender's obligation under § 28:4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under § 28:4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a) of this section, the time when payment of the sender's obligation under §§ 28:4A-402(b) or 28:4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-105 and 28:4A-209.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

(a) Subject to §§ 28:4A-211(e), 28:4A-405(d), and 28:4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) of this section may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rules before initiation of the funds transfer. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-405, 28:4A-406, and 28:4A-501.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-405. Payment by beneficiary's bank to beneficiary.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under § 28:4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under

§ 28:4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e) of this section, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under § 28:4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under § 28:4A-406, and (iv) subject to § 28:4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under § 28:4A-402(c) because the funds transfer has not been completed. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-105, 28:4A-209, 28:4A-404, 28:4A-406, and 28:4A-501.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

(a) Subject to §§ 28:4A-211(e), 28:4A-405(d), and 28:4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the

amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under § 28:4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in §§ 28:4A-105, and 28:4A-405.

Legislative history of Law 9-95. — See note to § 28:4A-101.

Part 5. Miscellaneous Provisions.

§ 28:4A-501. Variation by agreement and effect of funds-transfer system rule.

(a) Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties

other than participating banks using the system to the extent stated in §§ 28:4A-404(c), 28:4A-405(d), and 28:4A-507(c). (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-105.

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the orginator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-503. Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-505. Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-506. Rate of interest.

(a) If, under this article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a

funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a) of this section, the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rate published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Legislative history of Law 9-95. — See note to § 28:4A-101.

§ 28:4A-507. Choice of law.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) of this section applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds

transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) of this section and a choice-of-law rule under subsection (c) of this section, the agreement under subsection (b) of this section prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. (Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595.)

Section references. — This section is referred to in § 28:4A-501.

Legislative history of Law 9-95. — See note to § 28:4A-101.

ARTICLE 5. LETTERS OF CREDIT.

Sec.
28:5-101. Short title.
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§ 28:5-101. Short title.

This article shall be known and may be cited as Uniform Commercial Code — Letters of Credit. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-101.)

Cited in Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-102. Scope.

(1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this subtitle or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-102.)

Section references. — This section is referred to in §§ 28:5-103, 28:5-104, and 28:5-117.

Cited in Engel Indus., Inc. v. First Am. Bank, 798 F. Supp. 9 (D.D.C. 1992).

§ 28:5-103. Definitions.

(1) In this article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 28:5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit". Section 28:5-108.

"Presenter". Section 28:5-112 (3).

(3) Definitions in other articles apply to this article and the sections in which they appear are:

"Accept" or "Acceptance". Section 28:3-410.

"Contract for sale". Section 28:2-106.

"Draft". Section 28:3-104.

"Holder in due course". Section 28:3-302.

"Midnight deadline". Section 28:4-104.

"Security". Section 28:8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-103.)

"Customer." — Taken together, subdivision (1)(g) of this section and § 28:5-107(2) establish that the only duty owed by a confirming bank is to its customer, the issuing bank; no duty is owed to the issuing bank's customer, the account party. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-104. Formal requirements; signing.

(1) Except as otherwise required in subsection (1)(c) of section 28:5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-104.)

§ 28:5-105. Consideration.

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-105.)

§ 28:5-106. Time and effect of establishment of credit.

(1) Unless otherwise agreed a credit is established

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-106.)

§ 28:5-107. Advice of credit; confirmation; error in statement of terms.

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-107.)

Duties owed to issuing bank. — A confirming bank acquires the rights and obligations of the issuing bank; in doing so, it accepts two duties: to perform its tasks in good faith and to ensure that the documents in the transaction conform on their face with the letter of credit's requirements. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

Taken together, paragraph (2) of this section and § 28:5-103(1)(g) establish that the only duty owed by a confirming bank is to its customer, the issuing bank; no duty is owed to the issuing bank's customer, the account party. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-108. "Notation credit"; exhaustion of credit.

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-108.)

Section references. — This section is referred to in § 28:5-103.

§ 28:5-109. Issuer's obligation to its customer.

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-109.)

Duties owed to issuing bank. — A confirming bank acquires the rights and obligations of the issuing bank; in doing so, it accepts two duties: to perform its tasks in good faith and to ensure that the documents in the transaction conform on their face with the letter of credit's requirements. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-110. Availability of credit in portions; presenter's reservation of lien or claim.

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-110.)

§ 28:5-111. Warranties on transfer and presentment.

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the

matters warranted by an intermediary under articles 7 and 8. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-111.)

Cited in Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand, or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-112.)

Section references. — This section is referred to in § 28:5-103.

§ 28:5-113. Indemnities.

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. (Dec. 30, 1963, 77 Stat. 712, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-113.)

§ 28:5-114. Issuer's duty and privilege to honor; right to reimbursement.

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or

documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 28:7-507) or of a certificated security (section 28:8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 28:3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 28:7-502) or a bona fide purchaser of a certificated security (section 28:8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) Omitted.

(5) Omitted. (Dec. 30, 1963, 77 Stat. 712, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-114; Mar. 16, 1993, D.C. Law 9-196, § 3, 39 DCR 9165.)

Section references. — This section is referred to in § 28:2-512.

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on the first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

§ 28:5-115. Remedy for improper dishonor or anticipatory repudiation.

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 28:2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 28:2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 28:2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-115.)

§ 28:5-116. Transfer and assignment.

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under article 9 on secured transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-116; Mar. 16, 1982, D.C. Law 4-85, § 7, 29 DCR 309.)

Section references. — This section is referred to in § 28:9-305.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

§ 28:5-117. Insolvency of bank holding funds for documentary credit.

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of section 28:5-102(1) on scope, the

receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-117.)

ARTICLE 6. BULK TRANSFERS.

Sec.
28:6-101. Short title.
28:6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.
28:6-103. Transfers excepted from this article.
28:6-104. Schedule of property, list of creditors.
28:6-105. Notice to creditors.
28:6-106. Application of the proceeds.
28:6-107. The notice.
28:6-108. Auction sales; "auctioneer".
28:6-109. What creditors protected.
28:6-110. Subsequent transfers.
28:6-111. Limitation of actions and levies.

§ 28:6-101. Short title.

This article shall be known and may be cited as Uniform Commercial Code — Bulk Transfers. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-101.)

Section references. — This section is referred to in § 29-240.

§ 28:6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 28:9-109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 28:9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are:

(a) all of those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell; and

(b) all restaurants (as defined in section 25-103(14)), cafes, bakeries, taverns (as defined in section 25-103 (17)) and like establishments where food or drink (including, but not limited to, spiritous liquors, malt liquors, beer and wine) is furnished for consideration.

(4) Except as limited by the following section all bulk transfers of goods located within the District are subject to this article. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-102; Feb. 7, 1980, D.C. Law 3-49, § 2, 26 DCR 2731.)

Section references. — This section is referred to in §§ 28:1-105 and 29-240.

Legislative history of Law 3-49. — Law 3-49, the "Uniform Commercial Code — Bulk Transfers Amendment Act of 1979," was introduced in Council and assigned Bill No. 3-104, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 6, 1979 and November 20, 1979, respectively. Signed by the Mayor on December 12, 1979, it was assigned Act No. 3-135 and transmitted to both Houses of Congress for its review.

§ 28:6-103. Transfers excepted from this article.

The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in the District who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in the District an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-103.)

Section references. — This section is referred to in §§ 28:9-111 and 29-240.

§ 28:6-104. Schedule of property, list of creditors.

(1) Except as provided with respect to auction sales (section 28:6-108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the Recorder of Deeds of the District.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the

names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-104.)

Section references. — This section is referred to in §§ 28:6-107, 28:6-108, and 29-240.

Failure to comply with the District of Columbia Bulk Sales Act does not provide a defense to a claim of conversion against a defendant with actual notice of the plaintiff's claim. Cooper v. McKenzie, 115 WLR 1813 (Super. Ct. 1987).

§ 28:6-105. Notice to creditors.

In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 28:6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice to the transfer in the manner and to the persons hereafter provided (section 28:6-107). (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-105.)

Section references. — This section is referred to in §§ 28:6-107, 28:6-109, and 29-240.

Failure to comply with the District of Columbia Bulk Sales Act does not provide a defense to a claim of conversion against a defendant with actual notice of the plaintiff's claim. Cooper v. McKenzie, 115 WLR 1813 (Super. Ct. 1987).

§ 28:6-106. Application of the proceeds.

Omitted.

§ 28:6-107. The notice.

(1) The notice to creditors (section 28:6-105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (section 28:6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 28:6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-107.)

Section references. — This section is referred to in §§ 28:6-105, 28:6-109, and 29-240.

§ 28:6-108. Auction sales; "auctioneer".

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of the schedule of the property to be sold, both prepared as before stated (section 28:6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 28:6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-108.)

Section references. — This section is referred to in §§ 28:6-104, 28:6-105, and 29-240.

§ 28:6-109. What creditors protected.

(1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 28:6-105 and 28:6-107) are not entitled to notice.

(2) Omitted. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-109.)

Section references. — This section is referred to in § 29-240.

§ 28:6-110. Subsequent transfers.

When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect. (Dec. 30, 1963, 77 Stat. 717, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-110.)

Section references. — This section is referred to in § 29-240.

Failure to comply with the District of Columbia Bulk Sales Act does not provide a defense to a claim of conversion against a defendant with actual notice of the plaintiff's claim. Cooper v. McKenzie, 115 WLR 1813 (Super. Ct. 1987).

§ 28:6-111. Limitation of actions and levies.

No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. (Dec. 30, 1963, 77 Stat. 717, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-111.)

Section references. — This section is referred to in § 29-240.

ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

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Part 1. General.

§ 28:7-101. Short title.

This article shall be known and may be cited as Uniform Commercial Code — Documents of Title. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-101.)

§ 28:7-102. Definitions and index of definitions.

(1) In this article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in article 1 (section 28:1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiated" section 28:7-501.

"Person entitled under the document" section 28:7-403 (4).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Contract for sale" section 28:2-106.

"Overseas" section 28:2-323.

"Receipt" of goods section 28:2-103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-102.)

Section references. — This section is referred to in § 28:2-103.

Cited in Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

§ 28:7-103. Relation of article to treaty, statute, tariff, classification or regulation.

To the extent that any treaty or statute of the United States, regulatory statute of the District or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-103.)

§ 28:7-104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-104.)

Cited in First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:7-105. Construction against negative implication.

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-105.)

Part 2. Issue—Issuer.

§ 28:7-201. Who may issue a warehouse receipt; storage under government bond.

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-201.)

Section references. — This section is referred to in § 28:9-105.

§ 28:7-202. Form of warehouse receipt; essential terms; optional terms.

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 28:7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this subtitle and do not impair his obligation of delivery (section 28:7-403) or his duty of care (section 28:7-204). Any contrary provisions shall be ineffective. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-202.)

Failure to issue proper warehouse receipt, or the issuance of an irregular document, does not take a case out of the scope of this article. Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

Omission from receipt. — Where loss was not caused by the omission of the storage location from the warehouse receipt, defendant could not be held liable under this section. Fotos v. Firemen's Ins. Co., App. D.C., 533 A.2d 1264 (1987).

§ 28:7-203. Liability for non-receipt or misdescription.

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-203.)

§ 28:7-204. Duty of care; contractual limitation of warehouseman's liability.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably

careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: Provided, however, That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) Omitted. (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-204.)

Section references. — This section is referred to in § 28:7-202.

Warehouseman was not negligent and liable for damage to stored furniture from a fire since arson under the circumstances was not a foreseeable result of any failure on the part of the warehouseman. Union Storage Co. v. McIntyre, App. D.C., 256 A.2d 787 (1969).

Cited in Houston v. Security Storage Co., App. D.C., 474 A.2d 143 (1984); Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986); Fotos v. Firemen's Ins. Co., App. D.C., 533 A.2d 1264 (1987).

§ 28:7-205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-205.)

Section references. — This section is referred to in § 28:7-502.

§ 28:7-206. Termination of storage at warehouseman's option.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the

notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 28:7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-206.)

§ 28:7-207. Goods must be kept separate; fungible goods.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-207.)

§ 28:7-208. Altered warehouse receipts.

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority, may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-208.)

§ 28:7-209. Lien of warehouseman.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3)(a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 28:7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-209; Mar. 16, 1982, D.C. Law 4-85, § 8, 29 DCR 309.)

Section references. — This section is referred to in § 28:7-202.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Cited in Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

§ 28:7-210. Enforcement of warehouseman's lien.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid,

despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-210.)

Section references. — This section is referred to in §§ 28:7-206 and 28:7-308.

Warehouseman's letter to owner of stored goods held insufficient notice of sale to satisfy lien. — See Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

Part 3. Bills of Lading; Special Provisions.

§ 28:7-301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded

by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. (Dec. 30, 1963, 77 Stat. 723, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-301.)

§ 28:7-302. Through bills of lading and similar documents.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-302.)

§ 28:7-303. Diversion; reconsignment; change of instructions.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-303.)

Section references. — This section is referred to in § 28:7-403.

§ 28:7-304. Bills of lading in a set.

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-304.)

§ 28:7-305. Destination bills.

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-305.)

§ 28:7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-306.)

§ 28:7-307. Lien of carrier.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-307.)

§ 28:7-308. Enforcement of carrier's lien.

(1) A carrier's lien may be enforced by public or private sale of the goods, en bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 28:7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-308.)

§ 28:7-309. Duty of care; contractual limitation of carrier's liability.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-309.)

Part 4. Warehouse Receipts and Bills of Lading: General Obligations.

§ 28:7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-401.)

Failure to issue proper warehouse receipt, or the issuance of an irregular document, does not take a case out of the scope of this article. Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

§ 28:7-402. Duplicate receipt or bill; overissue.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-402.)

§ 28:7-403. Obligation of warehouseman or carrier to deliver; excuse.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 28:2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this article (section 28:7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under section 28:7-503 (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-403.)

Section references. — This section is referred to in §§ 28:7-102, 28:7-202, and 28:7-503.

Duty to deliver. — Storage company was not excused from its duty under this section to deliver goods to owner where it did not timely ascertain the validity of the adverse claim to the property nor did it timely file an action for interpleader as required by § 28:7-603. Security Storage Co. v. Cave, App. D.C., 528 A.2d 880 (1987).

Cited in Kearns v. McNeill Bros. Moving & Storage Co., App. D.C., 509 A.2d 1132 (1986).

§ 28:7-404. No liability for good faith delivery pursuant to receipt or bill.

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-404.)

Part 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer.

§ 28:7-501. Form of negotiation and requirements of "due negotiation."

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-501.)

Section references. — This section is referred to in §§ 28:7-102 and 28:9-309.

§ 28:7-502. Rights acquired by due negotiation.

(1) Subject to the following section and to the provisions of section 28:7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-502.)

Section references. — This section is referred to in § 28:5-114.

§ 28:7-503. Document of title to goods defeated in certain cases.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title coverings them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 28:7-403) or with power of disposition under this subtitle (sections 28:2-403 and 28:9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article, pursuant to its own bill of lading discharges the carrier's obligation to deliver. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-503.)

Section references. — This section is referred to in §§ 28:7-209 and 28:7-403.

§ 28:7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 28:2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 28:2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-504.)

§ 28:7-505. Indorser not a guarantor for other parties.

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-505.)

§ 28:7-506. Delivery without indorsement; right to compel indorsement.

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer

becomes a negotiation only as of the time the indorsement is supplied. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-506.)

§ 28:7-507. Warranties on negotiation or transfer of receipt or bill.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-507.)

Section references. — This section is referred to in § 28:5-114.

§ 28:7-508. Warranties of collecting bank as to documents.

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-508.)

§ 28:7-509. Receipt or bill; when adequate compliance with commercial contract.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5). (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-509.)

Part 6. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions.

§ 28:7-601. Lost and missing documents.

(1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document.

If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-601.)

§ 28:7-602. Attachment of goods covered by a negotiable document.

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-602.)

§ 28:7-603. Conflicting claims; interpleader.

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, which ever is appropriate. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1; 1973 Ed., § 28:7-603.)

Duty to deliver. — Storage company was not excused from its duty under this section to deliver goods to owner where it did not timely ascertain the validity of the adverse claim to the property nor did it timely file an action for interpleader as required by this section. Security Storage Co. v. Cave, App. D.C., 528 A.2d 880 (1987).

Article 8. Investment Securities.

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Revision of article. — D.C. Law 9-196 revised this article by amending the existing sections, adding §§ 28:8-108, 28:8-321, 28:8-407, and 28:8-408, and omitting former § 28:8-407.

Part 1. Short Title and General Matters.

§ 28:8-101. Short title.

This article may be cited as "Uniform Commercial Code-Investment Securities." (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-101; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

§ 28:8-102. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) A "certificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer that is:

(A) Represented by an instrument issued in bearer or registered form;

(B) Of a type commonly dealt in on securities exchanges or markets, or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(C) Either 1 of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(2) An "uncertificated security" is a share, participation, or other interest in property or an obligation of the issuer that is:

(A) Not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(B) Of a type commonly dealt in on securities exchanges or markets; and

(C) Either 1 of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(3) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this article and not by Article 3, even though it also meets the requirements of that article. This article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this article.

(4) A certificated security is in "registered form" if:

(A) It specifies a person entitled to the security or the rights it represents; and

(B) Its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(5) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any indorsement.

(6) A "subsequent purchaser" is a person who takes other than by original issue.

(7) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(A) At least 90% of whose capital stock is held by or for 1 or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation, and each of which is:

(i) Subject to the supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(ii) A broker, dealer, or investment company registered under the federal securities laws; or

(iii) A national securities exchange or association registered under the federal securities laws; and

(B) Any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors.

(8) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(b) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

(1) "Adverse claim".	§ 28:8-302.
(2) "Bona fide purchaser".	§ 28:8-302.
(3) "Broker".	§ 28:8-303.
(4) "Debtor".	§ 28:9-105.
(5) "Financial intermediary".	§ 28:8-313.
(6) "Guarantee of the signature".	§ 28:8-402.
(7) "Initial transaction statement".	§ 28:8-408.
(8) "Instruction".	§ 28:8-308.
(9) "Intermediary bank".	§ 28:4-105.
(10) "Issuer".	§ 28:8-201.
(11) "Overissue".	§ 28:8-104.
(12) "Secured Party".	§ 28:8-105.
(13) "Security Agreement".	§ 28:9-105.

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-102; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:4-104, 28:5-103, 28:9-105, and 47-334.

Legislative history of Law 9-196. — See note to § 28:8-101.

Proprietary lease document. — A propri-

etary lease document is not the functional equivalent of a stock certificate or government or corporate bond commonly recognized as a medium for investment. First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:8-103. Issuer's lien.

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) The security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(2) The security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement to the registered owner or the registered pledgee. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-103; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-104. Effect of overissue; "overissue".

(a) The provisions of this article that validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but:

(1) If an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security and either to deliver a certificated security or to register the transfer of an uncertificated security to the person against surrender of any certificated security the person holds; or

(2) If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

(b) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-104; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-404 and 28:8-405.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-105. Certificated securities negotiable; statements and instructions not negotiable; presumptions.

(a) Certificated securities governed by this article are negotiable instruments.

(b) Statements (§ 28:8-408), notices, or the like, sent by the issuer of uncertificated securities and instructions (§ 28:8-308) are neither negotiable instruments nor certificated securities.

(c) In any action on a security:

(1) Unless specifically denied in the pleadings, each signature on the certificated security, in a necessary indorsement, on an initial transaction statement, or on an instruction, is admitted;

(2) If the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(3) If signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(4) If signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(5) After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect is ineffective (§ 28:8-202). (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-105; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-106. Applicability.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(1) Registration of transfer of a certificated security;

(2) Registration of transfer, pledge, or release of an uncertificated security; and

(3) Sending of statements of uncertificated securities. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-106; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-107. Securities transferable; action for price.

(a) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to the person or in blank, or the person may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(b) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(1) Certificated securities accepted by the buyer;

(2) Uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(3) Other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-107; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-108. Registration of pledge and release of uncertificated securities.

A security interest in an uncertificated security may be evidenced by the registration of a pledge to the secured party or a person designated by the secured party. There can be no more than 1 registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this article are terminated by the registration of release. (Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

Part 2. Issue — Issuer.

§ 28:8-201. "Issuer".

(a) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(1) Places or authorizes the placing of the person's name on a certificated security (other than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in the person's property or in an enterprise, or to evidence the person's duty to perform an obligation represented by the certificated security;

(2) Creates shares, participations, or other interests in the person's property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(3) Directly or indirectly creates fractional interests in the person's rights or property, which fractional interests are represented by certificated securities; or

(4) Becomes responsible for or in place of any other person described as an issuer in this section.

(b) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of the guarantor's guaranty, whether or not the guarantor's

obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to § 28:8-408.

(c) With respect to registration of transfer, pledge, or release (Part 4 of this article), "issuer" means a person on whose behalf transfer books are maintained. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-201; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-202. Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a security include:

(1) If the security is certificated, those stated on the security;

(2) If the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if the interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(3) Those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(b) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if the purchaser is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if there has been either substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as provided in the case of certain unauthorized signatures (§ 28:8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are

ineffective against a purchaser for value who has taken without notice of the particular defense.

(e) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-202; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-105.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-203. Staleness as notice of defects or defenses.

(a) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(1) The act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than 1 year after the date; and

(2) The act or event is not covered by paragraph (1) of this subsection and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

(b) A call that has been revoked is not within subsection (a) of this section. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-203; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-204. Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(1) The security is certificated, and the restriction is noted conspicuously thereon; or

(2) The security is uncertificated, and a notation of the restriction is contained in the initial transaction statement sent to the person, or, if the person's interest is transferred to the person other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-204; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 29-320.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-205. Effect of unauthorized signature on certificated security or initial transaction statement.

An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-205; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-202.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-206. Completion or alteration of certificated security or initial transaction statement.

(a) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(c) If an initial transaction statement contains the signature necessary to its validity, but is incomplete in any other respects:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if the person purchased the security referred to therein for value and without notice of the incorrectness.

(d) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-206; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-207. Rights and duties of issuer with respect to registered owners and registered pledgees.

(a) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all rights and powers of an owner.

(b) Pursuant to the provisions of subsections (c), (d), and (f) of this section, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(c) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentation to the issuer of a release instruction. The exercise of conversion rights with respect to a covertible uncertificated security is a transfer with the meaning of this section.

(d) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(1) Register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(2) Register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(3) Register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(e) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (d)(2) of this section or by registration of release and pledge under subsection (d)(3) of this section if the security interest is assigned.

(f) If an uncertificated security is subject to a registered pledge:

(1) Any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(2) Any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(3) Any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(g) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-207; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; July 25, 1995, D.C. Law 11-30, § 7(f), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 substituted "exercise" for "excise" in (a).

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

§ 28:8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person placing his or her signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(1) The certificated security or initial transaction statement is genuine;

(2) The person's own participation in the issue or registration of the transfer, pledge, or release of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) The person has reasonable grounds to believe the security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person by so placing the person's signature does not assume responsibility for the validity of the security in other respects. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-208; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

Part 3. Transfer.

§ 28:8-301. Rights acquired by purchaser.

(a) Upon transfer of a security to a purchaser (§ 28:8-313), the purchaser acquires the rights in the security which the purchaser's transferor had or had actual authority to convey unless the purchaser's rights are limited by § 28:8-302(d).

(b) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-301; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-302, and 28:8-320.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-302. "Bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser.

(a) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(1) Who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to the purchaser or in blank;

(2) To whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(3) To whom a security is transferred under the provisions of paragraph (3), (4)(A), or (7) of § 28:8-313(a).

(b) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security;

(c) A bona fide purchaser in addition to acquiring the rights of a purchaser (§ 28:8-301) also acquires an interest in the security free of any adverse claim.

(d) Notwithstanding § 28:8-301(a), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve the transferee's position by taking from a bona fide purchaser. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-302; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:5-114, 28:8-102, 28:8-301, 28:8-320, and 28:9-309.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-303. "Broker".

"Broker" means a person engaged for all or part of the person's time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-303; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-304. Notice to purchaser of adverse claims.

(a) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(1) The security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(b) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under § 28:8-403(d) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(c) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-304; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-310.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-305. Staleness as notice of adverse claims.

An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which the certificated security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a transfer:

(1) After 1 year from any date set for presentment or surrender for redemption or exchange; or

(2) After 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-305; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-306. Warranties on presentment and transfer of certificated securities; warranties of originators of instructions.

(a) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange. But a purchaser for value and

without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to the purchaser warrants only that the purchaser has no knowledge of any unauthorized signature (§ 28:8-311) in a necessary indorsement.

(b) A person by transferring a certificated security to a purchaser for value warrants only that:

(1) The person's transfer is effective and rightful;

(2) The security is genuine and has not been materially altered; and

(3) The person knows of no fact which might impair the validity of the security.

(c) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only the intermediary's own good faith and authority, even though the intermediary has purchased or made advances against the claim to be collected against the delivery.

(d) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (c) of this section.

(e) A person who originates an instruction warrants to the issuer that:

(1) The person is an appropriate person to originate the instruction; and

(2) At the time the instruction is presented to the issuer the person who originates the instruction will be entitled to the registration of transfer, pledge, or release.

(f) A person who originates an instruction warrants to any person specifically guaranteeing the person's signature (§ 28:8-312(c)) that:

(1) The person is an appropriate person to originate the instruction; and

(2) At the time the instruction is presented to the issuer:

(A) The person will be entitled to the registration of transfer, pledge, or release; and

(B) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(g) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (§ 28:8-312(f)) that:

(1) The person is an appropriate person to originate the instruction;

(2) The uncertificated security referred to therein is valid; and

(3) At the time the instruction is presented to the issuer:

(A) The transferor will be entitled to the registration of transfer, pledge, or release;

(B) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(C) The requested transfer, pledge, or release will be rightful.

(h) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that the person is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (2), (3)(B), and (3)(C) of subsection (g) of this section.

(i) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(1) The person's transfer is effective and rightful; and

(2) The uncertificated security is valid.

(j) A broker gives to the broker's customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker, acting as an agent, are in addition to applicable warranties given by and in favor of the broker's customer. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-306; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:5-114.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-307. Effect of delivery without indorsement; right to compel indorsement.

If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement the purchaser may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-307; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-308. Indorsements; instructions.

(a) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or the person's signature is written without more upon the back of the security.

(b) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the

security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(c) An indorsement purporting to be only part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(d) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(e) An instruction originated by an appropriate person is:

(1) A writing signed by an appropriate person; or

(2) A communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

(f) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(g) "An appropriate person" in subsection (a) of this section means the person specified by the certificated security or by special indorsement to be entitled to the security.

(h) "An appropriate person" in subsection (e) or (f) of this section means:

(1) For an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(2) For an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(i) In addition to the persons designated in subsections (g) and (h) of this section, "an appropriate person" in subsections (a), (e), and (f) of this section includes:

(1) If the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(2) If the persons designated are described as more than 1 person as fiduciaries and 1 or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(3) If the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, the person's executor, administrator, guardian, or like fiduciary;

(4) If the persons designated are described as more than 1 person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(5) A person having power to sign under applicable law or controlling instruments; and

(6) To the extent that the person designated or any of the foregoing persons may act through an agent, the person's authorized agent.

(j) Unless otherwise agreed, the indorser of a certificated security by the indorser's indorsement or the originator of an instruction by the indorser's origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in § 28:8-306.

(k) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by the person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(l) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render the fiduciary's indorsement or an instruction originated by the fiduciary unauthorized for the purposes of this article. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-308; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; July 25, 1995, D.C. Law 11-30, § 7(g), 42 DCR 1547.)

Section references. — This section is referred to in §§ 28:4-104, 28:8-102, 28:8-105, 28:8-312, 28:8-401, 28:8-402, and 28:8-404.

Effect of amendments. — D.C. Law 11-30 substituted "the persons" for "the person" near the beginning of (i)(2).

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-30. — See note to § 28:8-207.

§ 28:8-309. Effect of indorsement without delivery.

An indorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears, or, if the indorsement is on a separate document, until delivery of both the document and the certificated security. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-309; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-310. Indorsement of certificated security in bearer form.

An indorsement of a certificated security in bearer form may give notice of adverse claims (§ 28:8-304) but does not otherwise affect any right to registration the holder possesses. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-310; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-311. Effect of unauthorized indorsement or instruction.

Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(1) The owner or pledgee may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or reregistered

certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to the owner or pledgee; and

(2) An issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (§ 28:8-404). (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-311; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-306 and 28:8-315.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-312. Effect of guaranteeing signature, indorsement, or instruction.

(a) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to indorse (§ 28:8-308); and

(3) The signer had legal capacity to sign.

(b) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction (§ 28:8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty;

(3) The signer had legal capacity to sign; and

(4) The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(c) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (b) of this section) but also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(2) The transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instructions.

(d) The guarantor under subsections (a) and (b) of this section or the special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(e) Any person guaranteeing an indorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (a) of this section but also warrants the rightfulness of the particular transfer in all respects.

(f) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (c) of this section but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(g) No issuer may require a special guarantee of signature (subsection (c) of this section), a guarantee of indorsement (subsection (e) of this section), or a guarantee of instruction (subsection (f) of this section) as a condition to registration of transfer, pledge, or release.

(h) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-312; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-306 and 28:8-402.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-313. When transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary".

(a) Transfer of a security or a limited interest (including a security interest therein) to a purchaser occurs only:

(1) At the time the purchaser or a person designated by the purchaser acquires possession of a certificated security;

(2) At the time the transfer, pledge, or release of an uncertificated security is registered to the purchaser or a person designated by the purchaser;

(3) At the time the purchaser's financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser;

(4) At the time a financial intermediary, not a clearing corporation, sends the purchaser confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(A) A specific certificated security in the financial intermediary's possession;

(B) A quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(C) A quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(5) With respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that the person holds for the purchaser;

(6) With respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that the person holds for the purchaser;

(7) At the time appropriate entries to the account of the purchaser or a person designated by the purchaser on the books of a clearing corporation are made under § 28:8-320;

(8) With respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(A) A financial intermediary on whose books the interest of the transferor in the security appears;

(B) A third person, not a financial intermediary, in possession of the security, if it is certificated;

(C) A third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(D) A third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(9) With respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security at the time new value is given by the secured party; or

(10) With respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraph (1), (2), (3), (4), or (5) of this subsection, at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(b) The purchaser is the owner of a security held for the purchaser by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (3), (4)(A), and (7) of subsection (a) of this section. If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (4)(B) and (4)(C) of subsection (a) of this section, the purchaser is the owner of a proportionate property interest in the fungible bulk.

(c) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser, the purchaser may demand transfer of an equivalent security as to which no notice of an adverse claim has been received.

(d) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-313; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-301, 28:8-302, 28:8-320, and 28:8-321.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-314. Duty to transfer, when completed.

(a) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(1) The selling customer fulfills the duty to transfer at the time the selling customer:

(A) Places a certificated security in the possession of the selling broker or of a person designated by the broker;

(B) Causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(C) If requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(D) Places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(2) The selling broker, including a correspondent broker acting for a selling customer, fulfills the broker's duty to transfer at the time the broker:

(A) Places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(B) Causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(C) Places in the possession of the buying broker, or a person designated by the buying broker, a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(D) Effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(b) Except as provided in this section or unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until the transferor:

(1) Places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(2) Causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(3) If the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(c) Unless made on an exchange, a sale to a broker purchasing for the broker's own account is within subsection (b) of this section and not within subsection (a) of this section. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-314; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-315. Action against transferee based upon wrongful transfer.

(a) Any person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, as against anyone except a bona fide purchaser, may:

(1) Reclaim possession of the certificated security wrongfully transferred;

(2) Obtain possession of any new certificated security representing all or part of the same rights;

(3) Compel the origination of an instruction to transfer to the person or a designee an uncertificated security constituting all or part of the same rights; or

(4) Have damages.

(b) If the transfer is wrongful because of an unauthorized indorsement of a certificated security the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against the owner under the provisions of this article on unauthorized indorsements (§ 28:8-311).

(c) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-315; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-316. Purchaser's right to requisites for registration of transfer, pledge, or release on books.

Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply the purchaser with any proof of the transferor's authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee

need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-316; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-317. Creditors' rights.

(a) Subject to the exceptions in subsections (c) and (d) of this section, no attachment or levy upon a certificated security or any share or other interest represented thereby that is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security that has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(b) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(c) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(d) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(e) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (c) or (d) of this section is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(f) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-317; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-318. No conversion by good faith conduct.

An agent or bailee who in good faith (including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which the agent or bailee had control according to the instructions of the principal of the agent or bailee, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-318; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-319. Statute of frauds.

A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) There is some writing signed by the party against whom enforcement is sought, or by the party's authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) Delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

(3) Within a reasonable time a writing in confirmation of sale or purchase and sufficient against the sender under paragraph (1) of this section has been received by the party against whom enforcement is sought and the party has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in the party's pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-319; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:1-206.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-320. Transfer or pledge within central depository system.

(a) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on

the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transeror, pledgor, or pledgee on the books of the clearing corporation, is subject to the control of the clearing corporation; and

(1) If certificated,

(A) Is in the custody of a clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them; and

(B) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or

(2) If uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or nominee of any of them.

(b) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like, and, in appropriate cases, may be on a net basis taking into account other transfers, pledges, or releases of the same security.

(c) A transfer under this section is effective (§ 28:8-313) and the purchaser acquires the rights of the transferor (§ 28:8-301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (§ 28:8-321). A transferee or pledgee under this section may be a bona fide purchaser (§ 28:8-302).

(d) A transfer or pledge under this section is not a registration of transfer under Part 4.

(e) That entries made on the books of the clearing corporation as provided in subsection (a) of this section are not appropriate does not affect the validity or effect of the entries or the liabilities or obligation of the clearing corporation to any person adversely affected thereby. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-320; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-313.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-321. Enforceability; attachment; perfection; and termination of security interests.

(a) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by the party pursuant to a provision of § 28:8-313(a).

(b) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred

solely under subparagraph (A) of § 28:8-313(a)(4) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of § 28:8-313(a) are satisfied.

(c) A security interest in a security is subject to the provisions of Article 9, but:

(1) No filing is required to perfect the security interest; and

(2) No written security agreement signed by the debtor is necessary to make the security interest enforceable, except as provided in paragraph (8), (9), or (10) of § 28:8-313(a). The secured party has the rights and duties provided under § 28:9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in the party's possession.

(d) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by the debtor pursuant to a provision of § 28:8-313(a). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by the party pursuant to a provision of § 28:8-313(a). (Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-320, 28:9-203, 28:9-302, and 28:9-312.

Legislative history of Law 9-196. — See note to § 28:8-101.

Part 4. Registration.

§ 28:8-401. Duty of issuer to register a transfer, pledge, or release.

(a) If a certificated security in registered form is presented to the issuer with a request to register a transfer or an instruction is presented to the issuer with a request to register a transfer, pledge, or release, the issuer shall register the transfer, pledge, or release as requested if:

(1) The security is indorsed or the instruction was originated by the appropriate person or persons (§ 28:8-308);

(2) Reasonable assurance is given that those indorsements or instructions are genuine and effective (§ 28:8-402);

(3) The issuer has no duty as to adverse claims or has discharged the duty (§ 28:8-403);

(4) Any applicable law relating to the collection of taxes has been complied with; and

(5) The transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(b) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or the issuer's principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-401; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-402. Assurance that indorsements and instructions are effective.

(a) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (§ 28:8-308) is genuine and effective:

(1) In all cases, a guarantee of the signature (§ 28:8-312(a) and (b)) of the person indorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer indentification number or, in the absence thereof, other reasonable assurance of identity;

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(3) If the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(4) If there is more than 1 fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) If the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(b) A "guarantee of the signature" in subsection (a)(1) of this section means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(c) "Appropriate evidence of appointment or incumbency" in subsection (a)(3) of this section means:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer, pledge, or release; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph except to the extent that the contents relate directly to the appointment or incumbency.

(d) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (c)(2) of this section, requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-402; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-401, and 28:8-403.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-403. Issuer's duty as to adverse claims.

(a) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(1) A written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or reregistered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

(2) The issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under § 28:8-402(d).

(b) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by the issuer or, if there be no such address, at the issuer's residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(1) An appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(2) There is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(c) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under § 28:8-402(d) or receives notification of an adverse claim under subsection (a) of this section, if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(1) An issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(2) An issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) The issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary or to the fiduciary's nominee.

(d) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(1) Claims embodied in a retraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (e) of this section.

(2) Claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (e) of this section;

(3) Claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to the registered owner; and

(4) Claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under § 28:8-402(d).

(e) If the issuer of an uncertificated security is under a duty as to an adverse claim, the issuer discharges that duty by:

(1) Including a notation of the claim in any statements sent with respect to the security under § 28:8-408(c), (f), and (g); and

(2) Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(f) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under § 28:8-408.

(g) Notwithstanding subsections (d) and (e) of this section, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(1) The claim was embodied in legal process that expressly provides otherwise;

(2) The claim was asserted in a written notification from the registered pledgee;

(3) The claim was one as to which the issuer was charged with notice from a controlling instrument it required under § 28:8-402(d) in connection with the pledgee's request for transfer; or

(4) The transfer requested is to the registered owner. (Dec. 30, 1963, 77 Stat. 743, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-403; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-304, 28:8-407, and 28:8-408.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-404. Liability and nonliability for registration.

(a) Except as provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

(1) There were on or with a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person (§ 28:8-308); and

(2) The issuer had no duty as to adverse claims or has discharged the duty (§ 28:8-403).

(b) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

(1) The registration was pursuant to subsection (a) of this section;

(2) The owner is precluded from asserting any claim for registering the transfer under § 28:8-405(a); or

(3) The delivery would result in overissue, in which case the issuer's liability is governed by § 28:8-104.

(c) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(1) The registration was pursuant to subsection (a) of this section; or

(2) The registration would result in overissue, in which case the issuer's liability is governed by § 28:8-104. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-404; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-311 and 28:8-405.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-405. Lost, destroyed, and stolen certificated securities.

(a) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under § 28:8-404 or any claim to a new security under this section.

(b) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated

security or, at the option of issuer, an equivalent uncertificated security in place of the original security if the owner:

(1) So requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(2) Files with the issuer a sufficient indemnity bond; and

(3) Satisfies any other reasonable requirements imposed by the issuer.

(c) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by § 28:8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under the person except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-405; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in § 28:8-404.

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-406. Duty of authenticating trustee, transfer agent, or registrar.

If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

(1) The person is under a duty to the issuer to exercise good faith and due diligence in performing the person's functions; and

(2) With regard to the particular functions the person performs, the person has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the functions performed by the agent. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-406; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-407. Exchangeability of securities.

(a) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(b) Upon surrender of a certificated security with all necessary indorsements and presentations of a written request by the person surrendering the security, the issuer, if the issuer has no duty as to adverse claims or has discharged the duty (§ 28:8-403), shall issue to the person or the person's designee an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(c) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(1) The registered owner, if the uncertificated security was not subject to a registered pledge; or

(2) The registered pledgee, if the uncertificated security was subject to a registered pledge. (Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Legislative history of Law 9-196. — See note to § 28:8-101.

§ 28:8-408. Statements of uncertificated securities.

(a) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The number of shares or units transferred;

(3) The name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(4) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) The date the transfer was registered.

(b) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The number of shares or units pledged;

(3) The name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(4) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the

uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) The date the pledge was registered.

(c) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The number of shares or units released from pledge;

(3) The name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(4) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) The date the release was registered.

(d) An "initial transaction statement" is the statement sent to:

(1) The new registered owner and, if applicable, to the registered pledgee pursuant to subsection (a) of this section;

(2) The registered pledgee pursuant to subsection (b) of this section; or

(3) The registered owner pursuant to subsection (c) of this section.

(e) Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(f) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The number of shares or units transferred;

(3) The name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(4) The date the transfer was registered.

(g) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The name and address and any taxpayer identification number of the registered owner;

(3) The number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(4) The name and address and any taxpayer identification number of the registered pledgee and the number of shares or units subject to the pledge; and

(5) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(h) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(1) A description of the issue of which the uncertificated security is a part;

(2) The name and address and any taxpayer identification number of the registered owner;

(3) The name and address and any taxpayer identification number of the registered pledgee;

(4) The number of shares or units subject to the pledge; and

(5) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under § 28:8-403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(i) If the issuer sends the statements described in subsections (g) and (h) of this section at periodic intervals no less frequent than quarterly, the issuer is not obligated to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(j) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security." (Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-105, and 28:8-403.

Legislative history of Law 9-196. — See note to § 28:8-101.

Article 9. Secured Transactions; Sales of Accounts and Chattel Paper.

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Part 1. Short Title, Applicability and Definitions.

§ 28:9-101. Short title.

This article shall be known and may be cited as Uniform Commercial Code — Secured Transactions. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-101.)

Section references. — This section is referred to in § 28-3108.

Cited in Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

§ 28:9-102. Policy and scope of article.

(1) Except as otherwise provided in section 28:9-104 on excluded transactions, this article applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 28:9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-102; Mar. 16, 1982, D.C. Law 4-85, § 10, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:2A-303 and 28-3108.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Contests between tax liens and secured parties. — While the UCC is, by its own terms, inapplicable to liens acquired by the District on account of delinquent taxes, the principle of "first in time, first in right" prevails as the general rule in contests between the Department of Finance and Revenue and private secured parties. Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981).

Creditor's obligation to give debtor notice of repossession and resale of collateral is governed by the Uniform Commercial Code. Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979).

Assignment of right to payments. —

Where janitorial company entered into a factoring arrangement with defendant, in which it assigned its right to payment pursuant to its contracts with the District to defendant, the assignment fell within the scope of Article 9. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991); Beitzell & Co. v. FDIC, 163 Bankr. 637 (Bankr. D.D.C. 1993).

§ 28:9-103. Perfection of security interests in multiple state transactions.

(1) *Documents, instruments and ordinary goods.* — (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty day period.

(d) When collateral is brought into and kept in the District while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into the District, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (section 28:9-307 (2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) *Certificate of title.* — (a) This subsection applies to goods covered by a certificate of title issued under a statute of the District or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the

certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into the District and thereafter covered by a certificate of title issued by the District is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into the District while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by the District and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) *Accounts, general intangibles and mobile goods.* — (a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) *Chattel paper.* — The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) *Minerals.* — Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) *Choice of law.* — The law (including conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and effect of perfection or nonperfection of a security interest in uncertificated securities. (Dec. 30, 1963, 77 Stat. 747, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-103; Mar. 16, 1982, D.C. Law 4-85, § 11, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(a), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:1-105, 28:9-105, 28:9-302, 28:9-312, 28:9-401, 28:9-402, 28:9-403, 28:9-405, 28:11-106, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

Applicability. — Where transaction does not fall within the purview of this article, the general choice of law provision, § 28:1-105, applies, not this section. Goldstein v. Madison Nat'l Bank, 807 F.2d 1070 (D.C. Cir. 1986).

Place chosen for filing. — Since the purpose of filing is to allow subsequent creditors of the debtor-assignor to determine the true status of its affairs, the place chosen for filing must be one which such creditors would normally associate with the assignor. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Notice policies satisfied by notification of account debtor. — So long as notice is given to the account debtor of the assignee's security interest, the notice policies which underlie subsections (1) and (5) of this section will still be satisfied when the assignment is neither executed in the District of Columbia nor made to an assignee in the District of Columbia. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Adequate notice provided by filing under subsection (1). — When subsection (1) of this section is relevant because the debtor-assignor has offices in various states in which the account records are kept, filing by the assignee in the jurisdiction where those offices are located would adequately notify subsequent creditors of the true status of the debtor-assignor's affairs. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Purpose of subsection (5). — Subsection (5) of this section was enacted to provide an alternative means for perfecting a security interest where a transaction between 2 countries raises a problem as to the required place of filing financial statements. Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Subsection (5) controls security interest. — When a security interest is involved, subsection (5) of this section controls rather than § 28:1-105(1). Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

Perfect of interest remains. — Once a security interest is noted on a certificate of title that required a condition of perfection, it remains perfected when the chattel is moved out of state even if the debtor has not obtained a new certificate of title in the other state. Streule v. Gulf Fin. Corp., App. D.C., 265 A.2d 298 (1970).

Cited in District of Columbia v. Franklin Inv. Co., App. D.C., 404 A.2d 536 (1979).

§ 28:9-104. Transactions excluded from article.

This article does not apply:

(a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 28:9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (section 28:9-306) and priorities in proceeds (section 28:9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in section 28:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (section 28:9-105 (1)), except as provided with respect to proceeds (section 28:9-306) and priorities in proceeds (section 28:9-312). (Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-104; Mar. 16, 1982, D.C. Law 4-85, § 12, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-102 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Assignment of right to receive payment was not within the purview of subsection (f) and therefore outside this article's ambit thus; financing statement was not necessary to perfect the assignment. Goldstein v. Madison Nat'l Bank, 807 F.2d 1070 (D.C. Cir. 1986).

Cited in Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979); Flack v. Laster, App. D.C., 417 A.2d 393 (1980); District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991); First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992); Beitzell & Co. v. FDIC, 163 Bankr. 637 (Bankr. D.D.C. 1993).

§ 28:9-105. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of article 1 (section 28:1-201) and a receipt of the kind described in section 28:7-201 (2);

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28:9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 28:3-104), or a certificated security (defined in section 28:8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 28:9-106.

"Attach". Section 28:9-203.

"Construction mortgage". Section 28:9-313 (1).

"Consumer goods". Section 28:9-109 (1).

"Equipment". Section 28:9-109 (2).

"Farm products". Section 28:9-109 (3).

"Fixture". Section 28:9-313.

"Fixture filing". Section 28:9-313.

"General intangibles". Section 28:9-106.

"Inventory". Section 28:9-109 (4).

"Lien creditor". Section 28:9-301 (3).

"Proceeds". Section 28:9-306 (1).

"Purchase money security interest". Section 28:9-107.

"United States". Section 28:9-103.

(3) The following definitions in other articles apply to this article:

"Check". Section 28:3-104.

"Contract for sale". Section 28:2-106.

"Holder in due course". Section 28:3-302.

"Note". Section 28:3-104.

"Sale". Section 28:2-106.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-105; Mar. 16, 1982, D.C. Law 4-85, § 13, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(b), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:2A-103, 28:8-102, 28:9-104, 28:9-204, 28-3108, 38-202, 40-1001, and 40-1101.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Proprietary lease document is not an "instrument" for perfection by possession. — Creditor did not perfect its security interest in debtor's cooperative apartment rights by taking possession of a proprietary lease document, because the document was not an "instrument" for purposes of perfection by possession. First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

Cited in Beitzell & Co. v. FDIC, 163 Bankr. 637 (Bankr. D.D.C. 1993).

§ 28:9-106. Definitions: "account"; "general intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-106; Mar. 16, 1982, D.C. Law 4-85, § 14, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:2A-103, 28:9-105, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Assignment of right to payments. — Where janitorial company entered into a factoring arrangement with defendant, in which it assigned its right to payment pursuant to its contracts with the District to defendant, the assignment fell within the scope of Article 9. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

As a general rule, a security interest in general intangibles includes choses in actions. In re Heron, Burchette, Ruckert & Rothwell, 148 Bankr. 660 (Bankr. D.D.C. 1992).

Cited in Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979).

§ 28:9-107. Definitions: "purchase money security interest".

A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-107.)

Section references. — This section is referred to in §§ 28:9-105 and 28-3108.

§ 28:9-108. When after-acquired collateral not security for antecedent debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-108.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-109.)

Section references. — This section is referred to in §§ 28:2-103, 28:2-316.1, 28:2A-103, 28:6-102, 28:9-105, and 28-3108.

Classification of goods is mutually exclusive. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Product may be classified as both "inventory" and "consumer goods" among the same parties at the same time. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Determination of classification. — A product's classification under the Uniform Commercial Code is determined at the time of the agreement between the parties giving rise to the security interest, and remains unaffected by a later transfer of the product in question. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Automobile held by a used car dealer for sale to the public in the ordinary course of business is "inventory" and remains so after the sale of automobile, so that under the Uniform Commercial Code a buyer in the ordinary course of business takes it free of the security interest of the dealer's chattel mortgagee. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Cited in Franklin Inv. Co. v. Smith, App. D.C., 383 A.2d 355 (1978).

§ 28:9-110. Sufficiency of description.

For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-110.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-111. Applicability of bulk transfer laws.

The creation of a security interest is not a bulk transfer under article 6 (see section 28:6-103). (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-111.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-112. Where collateral is not owned by debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 28:9-502(2) or under section 28:9-504(2), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under section 28:9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 28:9-505;

(c) to redeem the collateral under section 28:9-506;

(d) to obtain injunctive or other relief under section 28:9-507(1); and

(e) to recover losses caused to him under section 28:9-208(2). (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-112.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-113. Security interests arising under article on sales or article on leases.

A security interest arising solely under the article on sales (Article 2) or the article on leases (Article 2A) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(a) no security agreement is necessary to make the security interest enforceable;

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the article on sales (Article 2) in the case of a security interest arising solely under such article or (ii) by the article on leases (Article 2A) in the case of a security interest arising solely under such article. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-113; July 22, 1992, D.C. Law 9-128, § 2(d)(2), 39 DCR 3830.)

Section references. — This section is referred to in §§ 28:9-203, 28:9-302, and 28-3108.

Legislative history of Law 9-128. — Law 9-128, the "Uniform Commercial Code, Leases, Act of 1992," was introduced in Council and assigned Bill No. 9-19, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-212 and transmitted to both Houses of Congress for its review. D.C. Law 9-128 became effective on July 22, 1992.

§ 28:9-114. Consignment.

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this article by section 28:2-326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) the consignor complies with the filing provision of the article on sales with respect to consignments (section 28:2-326(3)(c)) before the consignee receives possession of the goods; and

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

(3)(a) In this subsection, the following words have the meanings indicated:

(i) "Art dealer" means an individual, partnership, firm, association, or corporation, other than a public auctioneer, that undertakes to sell a work of fine art created by another.

(ii) "Artist" means the creator of a work of fine art.

(iii) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(iv) "Work of fine art" means an original art work which is:

(A) a visual rendition including a painting, drawing, sculpture, mosaic, or photograph;

(B) a work of calligraphy;

(C) a work of graphic art including an etching, lithograph, offset print, or silk screen;

(D) a craft work in materials including clay, textile, fiber, wood, metal, plastic, or glass; or

(E) a work in mixed media including a collage or a work consisting of any combination of works included in this subsection.

(b) If an art dealer accepts a work of fine art on a fee, commission, or other compensation basis on consignment from the artist, then the following shall apply:

(i) the art dealer is, with respect to that work of fine art, the agent of the artist;

(ii) the work of fine art is trust property and the art dealer is trustee for the benefit of the artist until the work of fine art is sold to a bona fide third party; and

(iii) the proceeds of the sale of the work of fine art are trust property and the art dealer is trustee for the benefit of the artist until the amount due the artist from the sale is paid.

(c) Notwithstanding the purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account, a work of fine art that is trust property when initially accepted by the art dealer remains trust property until the purchase price is paid in full to the artist.

(d) Property that is trust property under this section is not subject to the claims, liens, or security interests of the creditors of an art dealer. (Mar. 16, 1982, D.C. Law 4-85, § 15, 29 DCR 309; Mar. 15, 1985, D.C. Law 5-167, § 2, 32 DCR 718.)

Section references. — This section is referred to in §§ 28:9-312 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 5-167. — Law 5-167, the "Uniform Commercial Code Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-299, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-232 and transmitted to both Houses of Congress for its review.

Part 2. Validity of Security Agreement and Rights of Parties Thereto.

§ 28:9-201. General validity of security agreement.

Except as otherwise provided by this article a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-201.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-202. Title to collateral immaterial.

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-202.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-203. Attachment and enforceability of security interest; proceeds; formal requisites.

(1) Subject to the provisions of § 28:4-210 on the security interest of a collecting bank, § 28:8-321 on security interests in securities, and § 28:9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by section 28:9-306.

(4) A transaction, although subject to this article, is also subject to chapter 19 of title 2, relating to pawnbrokers; chapter 7 of title 26, relating to money lenders; chapter 38 of title 28 relating to consumer credit sales and direct installment loans; chapter 10 of title 40, relating to liens on motor vehicles; and chapter 11 of title 40, relating to installment sales of motor vehicles; and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-203; Mar. 16, 1982, D.C. Law 4-85, § 16, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(c), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:1-206, 28:4-210, and 28:9-105.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Unperfected assignment. — An assignment that falls within the scope of Article 9 which is not perfected, leaves a property interest in the assignor against which a third party lien creditor, such as the IRS, can attach a lien. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983); Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991).

§ 28:9-204. After-acquired property; future advances.

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (section 28:9-314) when given as

additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of section 28:9-105). (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-204; Mar. 16, 1982, D.C. Law 4-85, § 17, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Cited in Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981).

§ 28:9-205. Use or disposition of collateral without accounting permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-205; Mar. 16, 1982, D.C. Law 4-85, § 18, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

§ 28:9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-206.)

Section references. — This section is referred to in §§ 28:9-318 and 28-3108.

§ 28:9-207. Rights and duties when collateral is in secured party's possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-207.)

Section references. — This section is referred to in §§ 28:8-321, 28:9-501, and 28-3108.

This section is essentially a codification of the common law. Borden v. District of Columbia, App. D.C., 417 A.2d 402 (1980).

§ 28:9-208. Request for statement of account or list of collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-208.)

Section references. — This section is referred to in §§ 28:9-112 and 28-3108.

Part 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority.

§ 28:9-301. Persons who take priority over unperfected security interests; right of "lien creditor".

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 28:9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-301; Mar. 16, 1982, D.C. Law 4-85, § 19, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-105 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Unperfected assignment. — An assignment that falls within the scope of Article 9 which is not perfected, leaves a property interest in the assignor against which a third party lien creditor, such as the IRS, can attach a lien. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in In re Estate of Jacobson, App. D.C., 387 A.2d 590 (1978); Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979); Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 28:9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 28:9-304 or in proceeds for a ten day period under section 28:9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 28:9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (section 28:4-210) or in securities (section 28:8-321) or arising under the article on sales (see section 28:9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or

(b) the provisions of section 40-1001 et seq. as amended; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (section 28:9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 28:9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-302; Mar. 16, 1982, D.C. Law 4-85, § 20, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(d), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:9-303, 28:11-106, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Unperfected assignment. — An assignment that falls within the scope of Article 9 which is not perfected, leaves a property interest in the assignor against which a third party lien creditor, such as the IRS, can attach a lien. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

When IRS filed its tax lien, defendant merely held an unperfected security interest in assignor's accounts due from the District, thus, the federal tax lien had priority over defendant's security interest, and the District properly paid the amount due under the September accounts of the assignor to the IRS, even though the District had actual notice of the assignment. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979); United States v. Coyne, 540 F. Supp. 175 (D.D.C. 1981); Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991); First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:9-303. When security interest is perfected; continuity of perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 28:9-302, 28:9-304, 28:9-305 and 28:9-306. If such steps

are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-303.)

Section references. — This section is referred to in §§ 28:2A-307 and 28-3108.

Unperfected assignment. — An assignment that falls within the scope of Article 9 which is not perfected, leaves a property interest in the assignor against which a third party lien creditor, such as the IRS, can attach a lien. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Because defendant's security interest was unperfected, its assignor retained an interest in the accounts in the sense that any lien creditor of the assignor could attach its lien to the assigned accounts to satisfy its judgment. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991).

§ 28:9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money, certificated securities, or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 28:9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or

otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 28:9-312(3); or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-304; Mar. 16, 1982, D.C. Law 4-85, § 21, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(e), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:9-302, 28:9-303, 28:9-308, 28:9-312 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Unperfected assignment. — An assignment that falls within the scope of Article 9 which is not perfected, leaves a property interest in the assignor against which a third party lien creditor, such as the IRS, can attach a lien. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988).

§ 28:9-305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (section 28:5-116(2)(a)), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party. (Dec. 30, 1963, 77 Stat. 756, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-305; Mar. 16, 1982, D.C. Law 4-85, § 22, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(f), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:9-302, 28:9-303 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Lapse of possession. — There was no lapse of possession of funds where bank with perfected security interest in funds of organization subject to federal election laws simultaneously credited and debited funds derived from fund raising activities, to the debtor's account for the purposes of record keeping and compliance with federal election laws. Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988).

Proprietary lease document is not an "instrument" for perfection by possession. — Creditor did not perfect its security interest in debtor's cooperative apartment rights by taking possession of a proprietary lease document, because the document was not an "instrument" for purposes of perfection by possession. First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

Cited in Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981).

§ 28:9-306. "Proceeds"; secured party's rights on disposition of collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds; and

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings; and

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right to set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the

insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 28:9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. (Dec. 30, 1963, 77 Stat. 756, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-306; Mar. 16, 1982, D.C. Law 4-85, § 23, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-104, 28:9-105, 28:9-203, 28:9-302, 28:9-303, 28:9-304, 28:9-308, 28:9-402, 28:9-502, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Automobile held by a used car dealer for sale to the public in the ordinary course of business is "inventory" and remains so after the sale, so that under the Uniform Commercial Code a buyer in the ordinary course of business takes it free of the security interest of the dealer's chattel mortgagee. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Cited in Drabkin v. Midland-Ross Corp., 810 F.2d 270 (D.C. Cir. 1987); Tri-State Envelope of Md., Inc. v. Americans with Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988); Martens v. Hadley Mem. Hosp., 729 F. Supp. 1391 (D.D.C. 1990).

§ 28:9-307. Protection of buyers of goods.

(1) A buyer in ordinary course of business (section 28:1-201(9)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five day period. (Dec. 30, 1963, 77 Stat. 757, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-307; Mar. 16, 1982, D.C. Law 4-85, § 24, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:7-503, 28:9-103, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Classification of goods is mutually exclusive. — See Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Product may be classified as both "inventory" and "consumer goods." — See Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Determination of classification. — A product's classification under the Uniform Commercial Code is determined at the time of the agreement between the parties giving rise to the security interest, and remains unaffected by a later transfer of the product in question. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

Automobile held by a used car dealer for sale to the public in the ordinary course of business is "inventory" and remains so, so that under the Uniform Commercial Code a buyer in the ordinary course of business takes it free of the security interest of the dealer's chattel mortgagee. Franklin Inv. Co. v. Homburg, App. D.C., 252 A.2d 95 (1969).

§ 28:9-308. Purchase of chattel paper and instruments.

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under section 28:9-304 (permissive filing and temporary perfection) or under section 28:9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (section 28:9-306) even though he knows that the specific paper or instrument is subject to the security interest. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-308; Mar. 16, 1982, D.C. Law 4-85, § 25, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-306 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

§ 28:9-309. Protection of purchasers of instruments, documents, and securities.

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 28:3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 28:7-501) or a bona fide purchaser of a security (section 28:8-302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or

purchasers. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-309; Mar. 16, 1993, D.C. Law 9-196, § 5(g), 39 DCR 9165.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 9-196. — See note to § 28:9-103.

§ 28:9-310. Priority of certain liens arising by operation of law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-310.)

Section references. — This section is referred to in §§ 28:9-102, 28:9-104, and 28-3108.

§ 28:9-311. Alienability of debtor's rights: judicial process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-311.)

Section references. — This section is referred to in § 28-3108.

Exercise of security interest. — Under this section the exercise of lending bank's security interest in the borrower's accounts under § 28:9-501 et seq. requires not only the declaration of a default, but also the good faith execution of the affirmative remedies, such as acceleration, provided in the loan document. Martens v. Hadley Mem. Hosp., 729 F. Supp. 1391 (D.D.C. 1990).

§ 28:9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section 28:4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 28:9-103 on security interests related to other jurisdictions; section 28:9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (section 28:9-304(5)); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 28:8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-312; Mar. 16, 1982, D.C. Law 4-85, § 26, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(h), 39 DCR 9165.)

Section references. — This section is referred to in §§ 28:9-104, 28:9-301, 28:9-304, 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 9-196. — See note to § 28:9-103.

Cited in Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); In re Rothberg, 127 Bankr. 294 (Bankr. D.D.C. 1991); First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:9-313. Priority of security interests in fixtures.

(1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixtures filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of section 28:9-402 (5);

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 759, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-313; Mar. 16, 1982, D.C. Law 4-85, § 27, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-104, 28:9-105, 28:9-302, 28:9-401, 28:9-402, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

§ 28:9-314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 28:9-315 (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is

perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 760, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-314.)

Section references. — This section is referred to in §§ 28:9-204, 28:9-315, and 28-3108.

Perfected security interest in engine superior to prior interest in car. — Lender's security interest in automobile engine, perfected by bailee's possession prior to installation, was superior to credit union's previously perfected security interest in the whole automobile. Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983).

Cited in Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

§ 28:9-315. Priority when goods are commingled or processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled, or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 28:9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-315.)

Section references. — This section is referred to in §§ 28:9-314 and 28-3108.

Cited in Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990); Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

§ 28:9-316. Priority subject to subordination.

Nothing in this article prevents subordination by agreement by any person entitled to priority. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-316.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-317. Secured party not obligated on contract of debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-317.)

Section references. — This section is referred to in § 28-3108.

Mere existence of security interest does not impose contract or tort liability upon a secured party for the debtor's acts or omissions. District of Columbia v. Franklin Inv. Co., App. D.C., 404 A.2d 536 (1979).

§ 28:9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 28:9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-318; Mar. 16, 1982, D.C. Law 4-85, § 28, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Assignee of chose in action takes it subject to all the defenses existing at time of assignment. Hudson Supply & Equip. Co. v. Home Factors Corp., App. D.C., 210 A.2d 837 (1965).

Setoff. — Where the claims of the buyer against the seller existed at the time the seller assigned accounts receivable, credits to which buyer was entitled should be set off against an assignee's claim against buyer based on those accounts. Hudson Supply & Equip. Co. v. Home Factors Corp., App. D.C., 210 A.2d 837 (1965).

Right to payment. — Where the District received notice of the assignment and received a request that payment be made to defendant, the assignor would have no right to payment from the District. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

Part 4. Filing.

§ 28:9-401. Place of filing; erroneous filing; removal of collateral.

(1) The proper place to file in order to perfect a security interest is, in all cases, in the office of the Recorder of Deeds of the District. In this article, "filing officer" means said Recorder. When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 28:9-103, or when the financing statement is filed as a fixture filing (section 28:9-313) and the collateral is goods which are or are to become fixtures, then the proper place to file in order to perfect a security interest is in the office of the Recorder of Deeds of the District where a mortgage on the real estate would be filed or recorded.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in the District continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in section 28:9-103 determine whether filing is necessary in the District. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-401; Mar. 16, 1982, D.C. Law 4-85, § 29, 29 DCR 309.)

Cross references. — As to inapplicability of filing provisions to liens on motor vehicles and trailers, see § 40-1002.

Section references. — This section is referred to in §§ 28:11-106 and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

New implementing regulations. — The "District of Columbia Boat Titling Act of 1983" (D.C. Law 5-58, Mar. 14, 1984, 30 DCR 6293) provided that the filing provisions of Article 9 of Subtitle I of Title 28 do not apply to liens recorded pursuant to Article 29 of the Police Regulations of the District of Columbia.

§ 28:9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 28:9-103(5), or when the financing statement is filed as a fixture filing (section 28:9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in the District.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into the District, or when the debtor's location is changed to the District. Such a financing statement must state that the collateral was brought into the District or that the debtor's location was changed to the District under such circumstances; or

(b) proceeds under section 28:9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

1. This financing statement covers the following types (or items) of property:
(Describe) _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe Real Estate) _____

3. (If applicable) The above goods are to become fixtures on
(Describe Real Estate) _____
and this financing statement is to be filed in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

4. (If products of collateral are claimed) Products of the collateral are also covered.

(use whichever is applicable:)
Signature of Debtor (or Assignor) _____
Signature of Secured Party (or Assignee) _____

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to section 28:9-103(5), or a financing statement filed as a fixture filing (section 28:9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of the District. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new

appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-402; Mar. 16, 1982, D.C. Law 4-85, § 30, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:2A-309, 28:9-313, 28:9-403, 28:9-405, 28:9-408, 28:11-105, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Actual notice. — Under subsection (8), party could not assert that it was misled by typographical error in view of the fact that it had actual notice of assignment. Thomas Funding Corp. v. District of Columbia, 117 WLR 1441 (Super. Ct. 1988).

Typographical error. — A financing statement filed under the name "Silvermine" essentially fails to give notice of the security interest in the accounts receivable of Silverline. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

Cited in Heller v. Buchbinder, App. D.C., 399 A.2d 850 (1979); Bay Gen. Indus., Inc. v. Johnson, App. D.C., 418 A.2d 1050 (1980).

§ 28:9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 28:9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2)

unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapse statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7) a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $2.00.

(6) If the debtor is a transmitting utility (section 28:9-402(5)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 28:9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a filing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 28:9-103(5), or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of the District provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. (Dec. 30, 1963, 77 Stat. 763, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-403; Mar. 16, 1982, D.C. Law 4-85, § 31, 29 DCR 309; Feb. 5, 1994, D.C. Law 10-68, § 26, 40 DCR 6311.)

Section references. — This section is referred to in §§ 28:9-405, 28:11-106, and 28-3108.

Effect of amendments. — D.C. Law 10-68 substituted "(section 28:9-402(5))," for "(section 28:9—401(5))" in the first sentence of (6).

Legislative history of Law 4-85. — See note to § 28:9-102.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Typographical error. — A financing state-

ment filed under the name "Silvermine" essentially fails to give notice of the security interest in the accounts receivable of Silverline. District of Columbia v. Thomas Funding Corp., App. D.C., 593 A.2d 1030 (1991).

§ 28:9-404. Termination statement.

(1) If a financing statement covering consumer goods is filed on or after the effective date of this act, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with section 28:9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing office of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $2.00. (Dec. 30, 1963, 77 Stat. 764, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-404; Mar. 16, 1982, D.C. Law 4-85, § 32, 29 DCR 309.)

Section references. — This section is referred to in §§ 28-3108, 42-102, and 42-104.

Legislative history of Law 4-85. — See note to § 28:9-102.

References in text. — The "effective date of this act", referred to in the first sentence of subsection (1), is set forth in § 28:11-101.

§ 28:9-405. Assignment of security interest; duties of filing officer; fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 28:9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be $2.00.

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to section 28:9-103(5), he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of the District provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $2.00. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (section 28:9-402(6)) may be made only by an assignment of the mortgage in the manner provided by the law of the District of Columbia other than this act.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. (Dec. 30, 1963, 77 Stat. 764, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-405; Mar. 16, 1982, D.C. Law 4-85, § 33, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-403, 28:9-404, 28:9-406, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

References in text. — "This act", referred to at the end of the last sentence in subsection (2), is D.C. Law 4-85.

§ 28:9-406. Release of collateral; duties of filing officer; fees.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment assigned by the secured party of record and complying with section 28:9-405(2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be $2.00. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-406; Mar. 16, 1982, D.C. Law 4-85, § 34, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

§ 28:9-407. Information from filing officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be $1.00 plus $0.50 for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing, continuation or termination statement or statement of assignment or release for a uniform fee of $3.00 for the first two pages or less, and $1.00 for each additional page, plus $0.50 for certification. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-407.)

Section references. — This section is referred to in § 28-3108.

§ 28:9-408. Financing statements covering consigned or leased goods.

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee," or the like instead of the terms

specified in section 28:9-402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (section 28:1-201(37)). However, if it is determined for other reason that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing. (Mar. 16, 1982, D.C. Law 4-85, § 35, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Part 5. Default.

§ 28:9-501. Default; procedure when security agreement covers both real and personal property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 28:9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in his part, those provided in the security agreement and those provided in section 28:9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (section 28:9-504(3) and section 28:9-505) and with respect to redemption of collateral (section 28:9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) section 28:9-502(2) and section 28:9-504(2) insofar as they require accounting for surplus proceeds of collateral;

(b) section 28:9-504(3) and section 28:9-505(1) which deal with disposition of collateral;

(c) section 28:9-505(2) which deals with acceptance of collateral as discharge of obligation;

(d) section 28:9-506 which deals with redemption of collateral; and

(e) section 28:9-507(1) which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with

his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-501; Mar. 16, 1982, D.C. Law 4-85, § 36, 29 DCR 309.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Exercise of security interest. — Under § 28:9-311, the exercise of lending bank's security interest in the borrower's accounts under § 28:9-501 et seq. requires not only the declaration of a default, but also the good faith execution of the affirmative remedies, such as acceleration, provided in the loan document. Martens v. Hadley Mem. Hosp., 729 F. Supp. 1391 (D.D.C. 1990).

When a debtor is in default under a security agreement, the secured party may enforce the security interest by any available judicial procedure. Council v. Hogan, App. D.C., 566 A.2d 1070 (1989).

Conditional vendee's rights in collateral are not cut off after the entry of a default judgment for failing to pay, since it merely satisfies a condition precedent to the conditional vendor's right to invoke remedies. Roebuck v. Walker-Thomas Furn. Co., App. D.C., 310 A.2d 845 (1973).

Upon failure of the conditional vendee to make payment, the conditional vendor has the right to replevy the goods and either keep them or sell them according to the notice provisions of the Uniform Commercial Code. Roebuck v. Walker-Thomas Furn. Co., App. D.C., 310 A.2d 845 (1973).

Waiver of rules governing disposition of collateral. — To the extent that lease provision could be read to permit secured party to sell repossessed equipment without giving the statutory notice to debtor, it was unenforceable under subsection (3)(b). Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Cited in Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979); Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

§ 28:9-502. Collection rights of secured party.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 28:9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-502; Mar. 16, 1982, D.C. Law 4-85, § 37, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-112, 28:9-501, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Deficiency following foreclosure. — Foreclosure remedies in Article 9 other than § 28:9-505(2) allow the secured party to sue the debtor for a deficiency if a sale of the foreclosed collateral does not produce enough money to satisfy the debtor's obligation. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

A secured party who chooses the remedy of strict foreclosures under § 28:9-505(2) foregoes the right to sue the debtor for any deficiency between the value of the collateral and the amount of the outstanding debt. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

Cited in Council v. Hogan, App. D.C., 566 A.2d 1070 (1989).

§ 28:9-503. Secured party's right to take possession after default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 28:9-504. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-503.)

Section references. — This section is referred to in § 28-3108.

Chattel mortgagee's right to take possession of impounded vehicle flows not from the impoundment provisions, but from the Uniform Commercial Code provisions governing secured transactions. District of Columbia v. Franklin Inv. Co., App. D.C., 404 A.2d 536 (1979).

The statutory scheme of § 40-703(k)(4) does not make the District a lienholder regarding the towing and storage fees on an impounded vehicle such that the District would have priority over a prior chattel mortgagee. Franklin Inv. Co. v. District of Columbia, App. D.C., 462 A.2d 447 (1983).

Exercise of security interest. — Under § 28:9-311, the exercise of lending bank's security interest in the borrower's accounts under § 28:9-501 et seq. requires not only the declaration of a default, but also the good faith execution of the affirmative remedies, such as acceleration, provided in the loan document. Martens v. Hadley Mem. Hosp., 729 F. Supp. 1391 (D.D.C. 1990).

Cited in Fateh v. Rich, App. D.C., 481 A.2d 464 (1984); Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986); Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990); Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the

agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must reasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if, except in the case of consumer goods, he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings;

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and

duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-504; Mar. 16, 1982, D.C. Law 4-85, § 38, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-112, 28:9-501, 28:9-503, 28:9-505, 28:9-506, and 28-3108.

Legislative history of Law 4-85. — See note to § 28:9-102.

Statute of limitations. — Plaintiff's causes of action for conversion, violation of the U.C.C., breach of contract, and wrongful transfer were barred by the statute of limitations. Riddell v. Riddell Wash. Corp., 680 F. Supp. 4 (D.D.C. 1987), modified on other grounds, 866 F.2d 1480 (D.C. Cir. 1989).

The vitality of a claim under this section is at the most three years. Riddell v. Riddell Wash. Corp., 866 F.2d 1480 (D.C. Cir. 1989).

Even assuming that the statute of limitations on plaintiff's UCC claim did not begin to run until he had notice of that claim, his notice of the foreclosure triggered a duty to inquire as to any claims arising from the manner in which the foreclosure was effected. Riddell v. Riddell Wash. Corp., 866 F.2d 1480 (D.C. Cir. 1989).

Disposal of collateral not governed by UCC. — When the secured creditor ignores his rights against the collateral and elects to proceed on the underlying debt, the subsequent disposal of collateral is not governed by the requirements of the Uniform Commercial Code. Roebuck v. Walker-Thomas Furn. Co., App. D.C., 310 A.2d 845 (1973).

Debtor's use of collateral in ordinary course of business. — A creditor does not necessarily waive its security interest by allowing the debtor to retain possession of collateral and use it in the ordinary course of business. Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

A secured creditor does not waive its rights in collateral by initially suing on the debt instead of seeking immediate repossession. Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

Implied waiver of security interest in collateral. — To constitute an implied waiver of a security interest in collateral, there must exist unequivocal acts or conduct evidencing an intent to waive; waiver will not be inferred from doubtful or ambiguous factors. Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

Except in cases where estoppel or laches may apply, a secured creditor's mere inaction does not constitute an implied waiver of its rights in collateral. Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

Creditor is not entitled to a deficiency judgment; his recovery is limited to the proceeds of the private sale if he has failed to give the required notice of the private sale. Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Creditor's failure to give required notice of private sale is not cured by the trial court's determination of the reasonable value of the goods at the time of the sale. Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979).

Creditor's failure to give required notice of private sale. — Bar to a deficiency judgment for failure to give debtor notice of private sale did not in itself constitute any obstacle to the enforcement by secured party of a security interest in any collateral remaining in the debtor's possession. Fleming v. Carroll Publishing Co., App. D.C., 581 A.2d 1219 (1990).

Debtor's voluntary delivery of collateral not equivalent of notice. — When a creditor contemplates a private sale and is accordingly required only to notify the debtor of "the time after which any private sale ... is to be made," a debtor's voluntary delivery of the collateral for the purpose of having it sold by the creditor is not the equivalent of notice to the debtor of the time "after which" a private sale will take place. Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979).

Strict compliance with notice requirements not preempted. — A debtor's voluntary delivery of the collateral should not preempt his right to strict compliance with the notice requirements. Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979).

Deficiency following foreclosure. — Foreclosure remedies in Article 9 other than § 28:9-505(2) allow the secured party to sue the debtor for a deficiency if a sale of the foreclosed collateral does not produce enough money to satisfy the debtor's obligation. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

A secured party who chooses the remedy of strict foreclosures under § 28:9-505(2) foregoes the right to sue the debtor for any deficiency between the value of the collateral and the amount of the outstanding debt. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

Cited in Franklin Inv. Co. v. Smith, App. D.C., 383 A.2d 355 (1978); District of Columbia

v. Franklin Inv. Co., App. D.C., 404 A.2d 536 (1979); Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); J. Nichols Produce Co. v. Kingston Mgt. Corp., 110 WLR 2493 (Super. Ct. 1982); Johnson v. Conrail-Amtrak Fed. Credit Union, 111 WLR 2297 (Super. Ct. 1983); Fateh v. Rich, App. D.C., 481 A.2d 464 (1984); Anderson v. Peoples Sec. Bank, App. D.C., 503 A.2d 670 (1986); Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986); Council v. Hogan, App. D.C., 566 A.2d 1070 (1989).

§ 28:9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

(1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 28:9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 28:9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if, except in the case of consumer goods, he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under section 28:9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-505; Mar. 16, 1982, D.C. Law 4-85, § 39, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:9-112, 28:9-501, 28:9-506, 28-3108, and 28-3812.

Legislative history of Law 4-85. — See note to § 28:9-102.

Requirements of subsection (2). — Under subsection (2) of this section, a secured creditor (1) must take possession of the collateral after default; (2) must send written notice to the debtor of its intention to retain the collateral in satisfaction of the obligation, unless the debtor has signed after default a statement renouncing or modifying his rights under this subsection (3) must send notice of its intent to foreclose to any other creditor of the debtor who has previously sent the secured creditor written notice of a claim of interest in the collateral; and (4) may retain the collateral in satisfaction of the debtor's obligation if, within 21 days after sending notice, the secured creditor does not receive an objection in writing from some party entitled to notice. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

Deficiency following foreclosure. — Foreclosure remedies in Article 9 other than this section allow the secured party to sue the debtor for a deficiency if a sale of the foreclosed collateral does not produce enough money to satisfy the debtor's obligation. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

A secured party who chooses the remedy of strict foreclosures under paragraph (2) of this

section foregoes the right to sue the debtor for any deficiency between the value of the collateral and the amount of the outstanding debt. Leroy Adventures, Inc. v. Cafritz Harbour Group, Inc., App. D.C., 660 A.2d 908 (1995).

Multiple liabilities. — Failure to act on original note, following default on a second note and the maturity of that note, did not mean that the creditor elected to take the original note in full satisfaction of the debt. Creditors were not absolved of the second liability because the creditor chose one course of action rather than another. Freeman v. FDIC, 842 F. Supp. 2 (D.D.C. 1993), aff'd, 56 F.3d 1394 (D.C. Cir. 1995).

§ 28:9-506. Debtor's right to redeem collateral.

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 28:9-504 or before the obligation has been discharged under section 28:9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-506.)

Section references. — This section is referred to in §§ 28:9-112, 28:9-501, and 28-3108.

Debtor who voluntarily surrenders collateral has statutory right to notice. Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979).

Burden is on creditor to prove that the fair and reasonable value of the security is being credited to the debtor's account. Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979).

Cited in Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Malakoff v. Washington, App. D.C., 434 A.2d 432 (1981); Anderson v. Peoples Sec. Bank, App. D.C., 503 A.2d 670 (1986).

§ 28:9-507. Secured party's liability for failure to comply with this part.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with the reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The

principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-507.)

Section references. — This section is referred to in §§ 28:9-112, 28:9-501, 28:9-505, and 28-3108.

Cited in Franklin Inv. Co. v. Smith, App. D.C., 383 A.2d 355 (1978); Gavin v. Washington Post Employees Fed. Credit Union, App. D.C., 397 A.2d 968 (1979); Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Fleming v. Carroll Publishing Co., App. D.C., 621 A.2d 829 (1993).

ARTICLE 10. CONSTRUCTION WITH OTHER LAWS.

Sec.
28:10-101. [Omitted].
28:10-102. [Omitted].
28:10-103. Inconsistent laws; what law governs.
28:10-104. Laws not repealed.

§ 28:10-101. Effective date.

Omitted.

§ 28:10-102. Specific repealer; provision for transition.

Omitted.

§ 28:10-103. Inconsistent laws; what law governs.

(a) Except as provided by section 28:10-104, if any provision of law is inconsistent with this subtitle, this subtitle shall govern, unless this subtitle or the inconsistent provision of the other law specifically provides otherwise.

(b) If any provision of this subtitle is inconsistent with the Commissioner's Order entitled the Regulations Governing the Business of Buying, Selling and Financing of Motor Vehicles in the District of Columbia Department of Licenses and Inspections, issued October 20, 1960 (C.O. 60-2219; 5AA DCRR), the Commissioner's Order shall govern, unless this subtitle or the inconsistent provision of the Commissioner's Order specifically provides otherwise. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § l; 1973 Ed., § 28:10-103; Mar. 31, 1982, D.C. Law 4-90, § 5, 29 DCR 666.)

Legislative history of Law 4-90. — Law 4-90, the "District of Columbia Automobile Financing and Repossession Act of 1981," was introduced in Council and assigned Bill No. 4-17, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 4, 1982, it was assigned Act No. 4-148 and transmitted to both Houses of Congress for its review.

§ 28:10-104. Laws not repealed.

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 28:1-201).

(2) This subtitle does not supersede or modify the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfers, approved July 5, 1960 (74 Stat. 322), being all of the District of Columbia Code, 1961 edition, and if in any respect there is any inconsistency between that Act and article 8 of this subtitle relating to investment securities, the provisions of that Act, rather than article 8, control. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § 1; 1973 Ed., § 28:10-104.)

Section references. — This section is referred to in § 28:10-103.

Editor's notes. — The reference to "subchapter II of chapter 23 of Title 28 of the District of Columbia Code, 1961 edition", appearing in (2), has no counterpart in the 1981 edition. Fiduciary Security Transfers are treated at § 28-2901 et seq.

ARTICLE 11. EFFECTIVE DATE AND TRANSITION PROVISIONS.

Sec.
28:11-101. Effective date.
28:11-102. [Omitted].
28:11-103. Transition to this act — general rule.
28:11-104. Transition provision on change of requirement of filing.
28:11-105. Transition provision on change of place of filing.
28:11-106. Required refilings.
28:11-107. Transition provisions as to priorities.
28:11-108. Presumption that rule of law continues unchanged.

§ 28:11-101. Effective date.

The provisions of this act which amend article 9 and the provisions affecting secured transactions shall become effective at 12:01 A.M. on the 181st day after the effective date of this act. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Section references. — This section is referred to in §§ 28:11-103, 28:11-104, 28:11-105, 28:11-106, and 28:11-107.

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

References in text. — "This act", referred to in this section, is D.C. Law 4-85.

Editor's notes. — D.C. Law 4-85 became law on March 16, 1982. The 181st day following March 16, 1982 was September 13, 1982.

§ 28:11-102.

Omitted.

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-103. Transition to this act — general rule.

Transactions validly entered into after January 1, 1965 and before the effective date of this act (as provided in section 28:11-101), and which were subject to the provisions of articles 1 through 9 of the Uniform Commercial Code, effective January 1, 1965, and which would be subject to this act as amended if they had been entered into after the effective date of this act (as provided in section 28:11-101) and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided in this act, and may be continued as permitted by this act, except as stated in section 28:11-105. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-104. Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under article 9 of this subtitle, effective January 1, 1965, and which attached prior to the effective date of this act (as provided in section 28:11-101) but was not perfected shall be deemed perfected on such effective date of this act if this act permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-105. Transition provision on change of place of filing.

(1) A financing statement or continuation statement filed prior to the effective date of this act (as provided in section 28:11-101) which shall not have lapsed prior to such effective date of this act shall remain effective for the period provided for in article 9 of this subtitle, effective January 1, 1965, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of this act (as provided in section 28:11-101), any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under this act.

(3) The effectiveness of any financing statement or continuation statement filed prior to the effective date of this act (as provided in section 28:11-101) may be continued by a continuation statement as permitted by this act except that if this act requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 28:11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if this act had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under section 28:9-402(6) of this act on the effective date of this act (as provided in section 28:11-101). (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Section references. — This section is referred to in § 28:11-103.

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-106. Required refilings.

(1) If a security interest is perfected or has priority when this act takes effect (as provided in section 28:11-101) as to all persons or as to certain persons without any filing or recording, and if the filing of a financing

statement would be required for the perfection or priority of the security interest against those persons under this act, the perfection and priority rights of the security interest continue until three years after such effective date of this act. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when this act takes effect (as provided in section 28:11-101) under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after this act takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under section 28:9-302 (3) the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by this act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code effective January 1, 1965, or under any statute or other law repealed or modified by this act is still effective. Section 28:9-401 and section 28:9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of section 28:9-403(3) for continuation statements apply to such a financing statement. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Section references. — This section is referred to in § 28:11-105.

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-107. Transition provisions as to priorities.

Except as otherwise provided in this article, the Uniform Commercial Code effective January 1, 1965, shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of this act (as provided in section 28:11-101). In other cases questions of priority shall be determined by this act. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Legislative history of Law 4-85. — See note to § 28:11-101.

§ 28:11-108. Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of this act shall be deemed declaratory of the meaning of the Uniform Commercial Code, effective January 1, 1965. (Mar. 16, 1982, D.C. Law 4-85, § 40, 29 DCR 309.)

Legislative history of Law 4-85. — See note to § 28:11-101.

References in text. — "This act", referred to in this section, is D.C. Law 4-85.

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS.

Chapter
21. Assignment for Benefit of Creditors..... §§ 28-2101 to 28-2110.
23. Assignment of Choses in Action..... §§ 28-2301 to 28-2305.
25. Bonds and Undertakings..... §§ 28-2501 to 28-2504.
27. Business Holidays and Computation of Time..... §§ 28-2701 to 28-2711.
29. Fiduciary Security Transfers..... §§ 28-2901 to 28-2909.
31. Fraudulent Conveyances..... §§ 28-3101 to 28-3111.
33. Interest and Usury..... §§ 28-3301 to 28-3314.
35. Statute of Frauds..... §§ 28-3501 to 28-3505.
36. Direct Motor Vehicle Installment Loans..... §§ 28-3601 to 28-3603.
37. Revolving Credit Accounts..... §§ 28-3701 to 28-3702.
38. Consumer Protections..... §§ 28-3801 to 28-3819.
39. Consumer Protection Procedures..... §§ 28-3901 to 28-3909.
40. Hearing Aid Dealers and Consumers..... §§ 28-4001 to 28-4007.
41. Natural Disaster Consumer Protection..... §§ 28-4101 to 28-4103.
42. Radon Contractor Proficiency..... §§ 28-4201 to 28-4203.
45. Restraints of Trade..... §§ 28-4501 to 28-4518.
45A. Cigarette Sales Below Cost..... §§ 28-4521 to 28-4527.
46. Consumer Credit Service Organizations..... §§ 28-4601 to 28-4608.

CHAPTER 21. ASSIGNMENT FOR BENEFIT OF CREDITORS.

Sec.
28-2101. Form of assignment.
28-2102. Extent of assignment — Assets exempt.
28-2103. Assignee.
28-2104. Bond of assignee.
28-2105. Nonperformance by assignee — Trustee.
28-2106. Duties of assignee.
28-2107. Preferences prohibited.
28-2108. Proceedings for benefit of all creditors.
28-2109. Assignment to hinder or defraud creditors.
28-2110. Notice to creditors.

§ 28-2101. Form of assignment.

In a voluntary assignment for the benefit of creditors, the debtor shall annex to the assignment (1) an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, (2) a list of his creditors, their respective residences and places of business, if known, and (3) the amounts of their respective demands. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88-509, § 1; 1973 Ed., § 28-2101.)

Cross references. — As to exemptions, see § 15-501 et seq.

History of chapter. — See J. Nichols Produce Co. v. Kingston Mgt. Corp., 110 WLR 2493 (Super. Ct. 1982).

§ 28-2102. Extent of assignment — Assets exempt.

An assignment vests in the assignee the title to all property, except what is legally exempt, belonging to the debtor at the time of making the assignment

and comprehended within its general terms. The inventory annexed to an assignment is not conclusive as to the amount of the debtor's estate.

An assignment for the benefit of creditors does not include or cover property exempt from levy or sale on execution unless the exemption is expressly waived. The court may direct the manner in which exempt property may be ascertained and set aside before a sale by a trustee. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88-509, § 1; 1973 Ed., § 28-2102.)

§ 28-2103. Assignee.

Only a resident of the District of Columbia may be an assignee in an assignment for the benefit of creditors. His assent shall appear in writing in, or at the end of, or indorsed on, the assignment. An assignment is invalid unless acknowledged and recorded within five days after its execution in the land records of the District. A trust created by an assignment shall be executed under the supervision and control of the court having probate jurisdiction. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 569, Pub. L. 91-358, title I, § 151(a); 1973 Ed., § 28-2103.)

Cross references. — As to probate jurisdiction, see §§ 11-501 and 11-921.

Section references. — This section is referred to in § 28-2105.

§ 28-2104. Bond of assignee.

Immediately upon the filing for record of an assignment for the benefit of creditors, the assignee shall execute and file in the clerk's office of the court having probate jurisdiction his bond to the United States, in an amount and with security to be approved by a judge thereof, conditioned for the faithful performance of his duties according to law, and the court may from time to time require the assignee, or a trustee appointed in his place, to give additional security when required by the interests of the creditors. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 569, Pub. L. 91-358, title I, § 151(a); 1973 Ed., § 28-2104.)

Cross references. — As to probate jurisdiction, see §§ 11-501 and 11-921.

Section references. — This section is referred to in § 28-2105.

§ 28-2105. Nonperformance by assignee — Trustee.

If an assignee named in an assignment for the benefit of creditors fails or refuses to comply with any of the requirements of sections 28-2103 and 28-2104, a judge of the court having probate jurisdiction may, on the application of the assignor or a creditor interested in the assignment, remove the assignee and appoint a trustee in his place to execute the trusts created by the assignment, who shall give bond as the court may require. And the court may accept the resignation of an assignee or trustee, and in case of his resignation, death, or removal from the District, appoint a trustee in his place. The court, for cause shown, on the application of an interested person, may remove an assignee or trustee and appoint a trustee in his place, and make and enforce all orders necessary to put the newly appointed trustee in possession of all

property covered by the assignment. Upon the death of an assignee or trustee the court may require his executor or administrator to settle his account and to deliver over to his successor all property belonging to the trust, in default of which the successor may bring suit upon the bond of the deceased assignee or trustee or upon the bond of the executor or administrator, accordingly as the assignee or trustee, executor or administrator is the party in default. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 569, Pub. L. 91-358, title I, § 151(b); 1973 Ed., § 28-2105.)

Cross references. — As to probate jurisdiction, see §§ 11-501 and 11-921.

§ 28-2106. Duties of assignee.

An assignee or trustee, after giving bond, shall collect and take into his possession all the property covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. The court may require the assignor to be examined under oath touching his property, and may make all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The assignee or trustee shall return inventories of the assets coming to his hands and, upon the direction of the court, sell and dispose of them; and his conveyance of any property of the assignor, real or personal, transfers the entire title of the assignor therein to the purchaser. When the assets have been converted into money the assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in creditor's suits. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1; 1973 Ed., § 28-2106.)

§ 28-2107. Preferences prohibited.

A provision in a voluntary assignment made for the payment of one debt or liability in preference to another is void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets. This section does not affect the priority of liens and incumbrances created bona fide and existing before the execution of the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2107.)

Preferences not permitted to defeat equality in treatment of creditors demanded by section. — An assignment made for the benefit of only some, rather than all, of a debtor's creditors cannot be permitted to defeat the equality of treatment this section demands when a debtor yields control over his property to a trustee. An assignment insulates an insolvent debtor's assets from individual creditor process. Assets should be so insulated only when equality among creditors is provided simultaneously. J. Nichols Produce Co. v. Kingston Mgt. Corp., 110 WLR 2493 (Super. Ct. 1982).

§ 28-2108. Proceedings for benefit of all creditors.

A proceeding instituted under this chapter by one or more creditors is deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be

distributed, or expenses, including counsel fees, as may be just and equitable. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2108.)

§ 28-2109. Assignment to hinder or defraud creditors.

This chapter does not prevent a creditor otherwise entitled from attacking an assignment as made to hinder or defraud the creditors of the assignor. When the court finds an assignment to have been made with that intent, it may enjoin any proceeding thereunder, and upon finally decreeing the assignment to be void may appoint a trustee with power to take possession of all the property of the debtor, and may make and enforce all orders necessary to put him in possession of the property. The trustee shall qualify in the same manner and perform the same duties as the trustees provided for by this chapter. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2109.)

Cross references. — As to fraudulent conveyances, see Chapter 31 of this title.

§ 28-2110. Notice to creditors.

The court shall require a trustee, whether named in the assignment or appointed by the court, in pursuance of this chapter, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2110.)

CHAPTER 23. ASSIGNMENT OF CHOSES IN ACTION.

Sec.
28-2301. Assignment of judgment or money decree.
28-2302. Assignment of bond or obligation.
28-2303. Assignment of nonnegotiable contract.
28-2304. General assignments including choses in action.
28-2305. Contract to assign future salary or wages.

§ 28-2301. Assignment of judgment or money decree.

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out an execution on the judgment in his own name, as the original plaintiff might have done. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2301.)

§ 28-2302. Assignment of bond or obligation.

An obligee named in a bond or obligation under seal for the payment of money may assign it in writing and the assignee may maintain an action thereon in his own name. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2302.)

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

§ 28-2303. Assignment of nonnegotiable contract.

An owner of a nonnegotiable written agreement for the payment of money, including a nonnegotiable bill of exchange and a promissory note, or for the delivery of personal property, an open account, debt, and demand of a liquidated character, except a claim against the United States or the salary of a public officer, may assign it in writing, and the assignee may maintain an action thereon in his own name. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1; 1973 Ed., § 28-2303.)

Cross references. — As to setoff of nonnegotiable debts, see § 13-502.

As to nonassignability of teachers' retirement annuities, see § 31-1217.

As to assignment of motor vehicle liens, see §§ 40-1008 and 40-1009.

District of Columbia law establishes the general rule that all claims are freely assignable, and permits the assignee to stand in the same position as the assignor. National Union Fire Ins. Co. v. Riggs Nat'l Bank, 5 F.3d 554 (D.C. Cir. 1993).

Congressional intent. — Congress did not intend this section to be utilized to evade the prohibition against the unauthorized practice of law by laymen, but only sought to allow suit on a debt to be brought in the name of the assignee. J.H. Marshall & Assocs. v. Burleson, App. D.C., 313 A.2d 587 (1973).

Assignee, but not collection agent, entitled to maintain suit in own name. — Where, as assignee of the claim, a party is entitled to maintain a suit in his own name under this section, but, where it is clear that he actually assumed the role of a collection agent for his company, he must engage a member of the bar to pursue his claim, under Rule 9(b) of the Superior Court Small Claims Rules. Shamey v. Hickey, App. D.C., 433 A.2d 1111 (1981).

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980); Brookens v. Committee on Unauthorized Practice of Law, App. D.C., 538 A.2d 1120 (1988).

§ 28-2304. General assignments including choses in action.

In a general assignment which includes choses in action, it is not necessary to execute a separate assignment of each chose in action, but the assignee, by virtue of the general assignment, may sue in his own name on the several choses in action included therein. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; 1973 Ed., § 28-2304.)

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

§ 28-2305. Contract to assign future salary or wages.

(a) A contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor, if made in the District of Columbia, is invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, is unenforceable in any court within the District of Columbia.

(b) Whoever, in the District of Columbia demands or receives from a debtor an assignment of salary or wages to be thereafter earned by the debtor, or notifies an employer that he holds an assignment of such salary or wages, upon conviction shall be fined not more than $200 or imprisoned not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 28-2305.)

CHAPTER 25. BONDS AND UNDERTAKINGS.

Sec.
28-2501. Definitions.
28-2502. Action on bonds in a penal sum containing an avoidance condition.
28-2503. Action on bond to United States — Interest by private person.
28-2504. Fiduciary's bond — Discharge only after accounting.

§ 28-2501. Definitions.

A bond, when required by or referred to in this Code, means an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and enforceable by action.

An undertaking means an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against the party and his sureties, if any, the party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; 1973 Ed., § 28-2501.)

Cross references. — As to attachment and garnishment bonds, see § 16-501.

As to undertaking in replevin, see § 16-3704.

As to sureties, see Chapter 41 of Title 16.

Cited in Schmidt v. Smith, 344 F.2d 168 (D.C. Cir. 1965).

§ 28-2502. Action on bonds in a penal sum containing an avoidance condition.

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act or of certain duties, has the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, may not exceed the penalty of the bond. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; 1973 Ed., § 28-2502.)

Section references. — This section is referred to in § 15-106.

§ 28-2503. Action on bond to United States — Interest by private person.

When a bond is executed to the United States by a fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, a person aggrieved by a breach of the condition may maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of the breach. The custodian of the bond shall furnish a certified copy thereof to the party for that purpose on payment of the legal fees therefor. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; 1973 Ed., § 28-2503.)

§ 28-2504. Fiduciary's bond — Discharge only after accounting.

A person appointed by order or decree of the court to a fiduciary office may not discharge his bond for the due performance of his duties, by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as fiduciary; but the funds or estate for the application whereof he is responsible shall be considered as remaining in his hands, and the bond shall continue in force as against both principal and sureties until the funds or estate are fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than himself. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1; 1973 Ed., § 28-2504.)

CHAPTER 27. BUSINESS HOLIDAYS AND COMPUTATION OF TIME.

Subchapter 1. Business Holidays.

Sec.
28-2701. Holidays designated — Time for performing acts extended.

Subchapter 2. Computation of Time.

Sec.
28-2711. Daylight savings time.

Subchapter 1. Business Holidays.

§ 28-2701. Holidays designated — Time for performing acts extended.

The following days in each year, namely, New Year's Day, January 1; Dr. Martin Luther King, Jr.'s Birthday, the third Monday in January; Washington's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; every Saturday, after twelve o'clock noon; any day appointed by the President of the United States as a day of public feasting or thanksgiving; and the day of the inauguration of the President, in every fourth year, are holidays in the District for all purposes. When a day set apart as a legal holiday, other than the day of the inauguration of the President, falls on a Saturday, the next preceding day is a holiday. When a day set apart as a legal holiday falls on a Sunday, the next succeeding day is a holiday. In such cases, when a Sunday and a holiday or holidays fall on successive days, all commercial papers falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1; 1973 Ed., § 28-2701; Aug. 1, 1975, D.C. Law 1-11, § 103, 22 DCR 1804; July 12, 1977, D.C. Law 2-13, § 2, 24 DCR 1443; Mar. 16, 1982, D.C. Law 4-77, § 2, 29 DCR 46; Mar. 14, 1985, D.C. Law 5-155, § 3, 32 DCR 11.)

Cross references. — As to designation of Dr. King's Birthday as a holiday for District employees, see § 1-504.

Section references. — This section is referred to in §§ 1-633.4 and 47-1401.

Legislative history of Law 1-11. — Law 1-11, the "King Birthday Act of 1975," was introduced in Council and assigned Bill No. 1-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 15, 1975 and April 29, 1975, respectively. Signed by the Mayor on May 28, 1975, it was assigned Act No. 1-16 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-13. — Law 2-13, the "Dr. King's Birthday Act of 1977," was introduced in Council and assigned Bill No. 2-35, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on May 2, 1977, it was assigned Act No. 2-35 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-77. — Law 4-77, the "District of Columbia Legal Holiday Clarification Act of 1981," was introduced in Council and assigned Bill No. 4-288, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981, and November 24, 1981, respectively. Approved without the signature of the Mayor on December 15, 1981, it was assigned Act No. 4-125 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-155. — Law 5-155, the "Martin Luther King, Jr., Birthday Holiday Conformity Act of 1984," was introduced in Council and assigned Bill No. 5-322, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-220 and transmitted to both Houses of Congress for its review.

Effective date of §§ 2 and 3 of Law 5-155. — Section 4(b) of D.C. Law 5-155 provides that §§ 2 and 3 of the act shall take effect January 1, 1986.

Cited in Cities of Batavia, Naperville, Rock Falls, Winnetka, Geneva, Rochelle & St. Charles v. Federal Energy Regulatory Comm'n, 672 F.2d 64 (D.C. Cir. 1982).

Subchapter 2. Computation of Time.

§ 28-2711. Daylight savings time.

The standard time applicable in the District of Columbia shall be advanced by one hour from 2:00 AM on the last Sunday in April of each year until 2:00 AM on the last Sunday in October of each year and this time, known as daylight savings time, shall, during the period of the year for which it is applicable, be the standard time for the District of Columbia. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1; 1973 Ed., § 28-2711; Mar. 13, 1985, D.C. Law 5-133, § 2, 31 DCR 5720.)

Legislative history of Law 5-133. — Law 5-133, the "District of Columbia Daylight Saving Time Act of 1984," was introduced in Council and assigned Bill No. 5-427, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 25, 1984, and October 9, 1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-191 and transmitted to both Houses of Congress for its review.

CHAPTER 29. FIDUCIARY SECURITY TRANSFERS.

Sec.
28-2901. Definitions.
28-2902. Registration in name of a fiduciary.
28-2903. Assignment by fiduciary.
28-2904. Evidence of appointment of incumbency.
28-2905. Adverse claims.
28-2906. Nonliability of corporation and transfer agent.
28-2907. Nonliability of third persons.
28-2908. Territorial application.
28-2909. Tax obligations.

§ 28-2901. Definitions.

In this chapter, unless the context otherwise requires:

(1) "assignment" includes a written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer;

(2) "claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of a similar interest, whether the claim is asserted by the claimant, or by a fiduciary, or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;

(3) "corporation" means a private or public corporation, association, or trust issuing a security;

(4) "fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee;

(5) "person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or other legal or commercial entity;

(6) "security" includes a share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation;

(7) "transfer" means a change on the books of a corporation in the registered ownership of a security;

(8) "transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1; 1973 Ed., § 28-2901.)

§ 28-2902. Registration in name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1; 1973 Ed., § 28-2902.)

§ 28-2903. Assignment by fiduciary.

Except as otherwise provided by this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1; 1973 Ed., § 28-2903.)

§ 28-2904. Evidence of appointment of incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall require the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof, and dated within sixty days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt reasonable standards with respect to evidence of appointment or incumbency under this subsection. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1; 1973 Ed., § 28-2904.)

§ 28-2905. Adverse claims.

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may notify in writing the corporation or transfer agent of the claim. The corporation or transfer agent is not put on notice unless the written notice (1) identifies the claimant, the registered owner, and the issue of which the security is a part, (2) provides an address for communications directed to the claimant, and (3) is received before the transfer. This chapter does not relieve the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized by subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1; 1973 Ed., § 28-2905.)

§ 28-2906. Nonliability of corporation and transfer agent.

A corporation or transfer agent does not incur liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1; 1973 Ed., § 28-2906.)

§ 28-2907. Nonliability of third persons.

(a) A person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is not liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) When a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1; 1973 Ed., § 28-2907.)

§ 28-2908. Territorial application.

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in the District of Columbia in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in the District of Columbia the signature of a fiduciary in connection with such a transaction. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1; 1973 Ed., § 28-2908.)

§ 28-2909. Tax obligations.

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of the District of Columbia. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1; 1973 Ed., § 28-2909.)

CHAPTER 31. FRAUDULENT CONVEYANCES.

Sec.
28-3101. Definitions.
28-3102. Insolvency.
28-3103. Value.
28-3104. Transfers fraudulent as to present and future creditors.
28-3105. Transfers fraudulent as to present creditors.
28-3106. When transfer is made or obligation is incurred.
28-3107. Remedies of creditors.
28-3108. Defenses, liability, and protection of transferee.
28-3109. Extinguishment of cause of action.
28-3110. Supplementary provisions.
28-3111. Uniformity of application and construction.

Revision of chapter. — D.C. Law 11-83 revised this chapter, substituting the present §§ 28-3101 to 28-3111 for former §§ 28-3101 to 28-3103 regarding Fraudulent Conveyances. Former §§ 28-3101 to 28-3103 were derived from the Act of August 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1.

Annotations from cases construing the prior version of this chapter have been retained where they are deemed to be of continuing assistance.

§ 28-3101. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliate" means:

(A) A person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not exercised the power to vote;

(B) A corporation having 20% or more of its outstanding voting securities that are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) As a fiduciary or agent without sole power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) A person whose business is operated by the debtor under a lease or other agreement, or a person whose assets are substantially all controlled by the debtor; or

(D) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include:

(A) Property to the extent it is encumbered by a valid lien;

(B) Property to the extent it is generally exempt under nonbankruptcy law; or

(C) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(A) If the debtor is an individual:

(i) A relative of the debtor or of a general partner of the debtor;

(ii) A partnership in which the debtor is a general partner;

(iii) A general partner in a partnership described in sub-subparagraph (ii) of this subparagraph;

(iv) A corporation of which the debtor is a director, officer, or person in control;

(v) An unincorporated business organization in which the debtor has capital participation as a member or partner with limitation of liability for that participation, if that capital participation includes the right to conduct the business of the organization; or

(vi) A member or partner in an unincorporated business organization described in sub-subparagraph (v) of this subparagraph who has the right to conduct the business of the organization or who controls the organization;

(B) If the debtor is a corporation:

(i) A director of the debtor;

(ii) An officer of the debtor;

(iii) A person in control of the debtor;

(iv) A partnership in which the debtor is a general partner;

(v) A general partner in a partnership described in sub-subparagraph (iv) of this subparagraph; or

(vi) A relative of a general partner, director, officer, or person in control of the debtor;

(C) If the debtor is a partnership:

(i) A general partner in the debtor;

(ii) A relative of a general partner in, or a general partner of, the partnership, or a person in control of the debtor;

(iii) Another partnership in which the debtor is a general partner;

(iv) A general partner in a partnership described in sub-subparagraph (iii) of this subparagraph; or

(v) A person in control of the debtor;

(D) If the debtor is an unincorporated business organization in which members or partners receive limitation of liability for their capital participation in the organization:

(i) A member or partner of the organization who has the right to conduct the business of the organization;

(ii) A person who controls the organization; or

(iii) A relative of a person described is sub-subparagraph (i) or (ii) of this subparagraph;

(E) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(F) A managing agent of the debtor.

(8) "Lien" means a charge against, or an interest in, property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of, or parting with, an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1; 1973 Ed., § 28-3101; Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — Law 11-83, the "Uniform Fraudulent Transfer Act of 1995," was introduced in Council and assigned Bill No. 11-228, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-160 and transmitted to both Houses of Congress for its review. D.C. Law 11-83 became effective on February 9, 1996.

Section may be liberally construed to suppress fraud in a proper case. Gibson v. Johnson, App. D.C., 492 A.2d 574 (1985).

Establishing intent. — Clear and convincing evidence of fraudulent intent was not found; rather, the record amply supported the court's factual finding that plaintiff did not establish intent to defraud. District-Realty Title Ins. Corp. v. Forman, App. D.C., 518 A.2d 1004 (1986).

Badges of fraud. — In evaluating claims of fraudulent intent, courts often discuss the "badges of fraud" in the case. The following "badges of fraud," among others, support the conclusion that a transferor had fraudulent intent: lack of consideration for the conveyance, a close relationship between the transferor and transferee, pendency or threat of litigation, financial difficulties of the transferor benefit of the property by the transferor. Consumers United Ins. Co. v. Smith, App. D.C., 644 A.2d 1328 (1994).

Inter-spousal transactions that hinder, delay or defraud creditors are open to attack by the affected creditors. In re Estate of Wall, 440 F.2d 215 (D.C. Cir. 1971).

Tenant not protected from landlord's transfer to evade rent ceiling. — A tenant whose rent was raised when her landlord's father transferred the premises to his son was not protected by this section, notwithstanding the tenant's contention that the transfer was made in an effort to evade the statutory rent ceiling limitation. Gibson v. Johnson, App. D.C., 492 A.2d 574 (1985).

Cited in Gibson v. Johnson, App. D.C., 486 A.2d 699 (1985); Foltz v. United States News & World Report, Inc., 640 F. Supp. 1184 (D.D.C. 1986); Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership, 163 Bankr. 615 (Bankr. D.D.C. 1993); Roberts & Lloyd, Inc. v. Zyblut, 122 WLR 2157 (Super. Ct. 1994).

§ 28-3102. Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3103. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred, or an antecedent debt is secured or satisfied. Value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of sections 28-3104(a)(2) and 28-3105, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Cross references. — As to attachment or garnishment due to fraudulent conveyance, see §§ 16-501 and 16-529.

As to fraudulent attornment, see § 45-1432.

Legislative history of Law 11-83. — See note to § 28-3101.

Cited in Neves v. Riley, 447 F. Supp. 306 (D.D.C. 1978); Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership, 163 Bankr. 615 (Bankr. D.D.C. 1993).

§ 28-3104. Transfers fraudulent as to present and future creditors.

(a) A transfer made, or obligation incurred, by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Section references. — This section is referred to in §§ 28-3103, 28-3108, and 28-3109.

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3105. Transfers fraudulent as to present creditors.

(a) A transfer made, or obligation incurred, by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or

obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Section references. — This section is referred to in §§ 28-3103, 28-3108, and 28-3109.

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3106. When transfer is made or obligation is incurred.

For the purposes of this chapter:

(1) A transfer is made:

(A) With respect to an asset that is real property other than a fixture, including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(A) If oral, when it becomes effective between the parties; or

(B) If evidenced by a writing, when the writing executed by the obligor is delivered to, or for the benefit of, the obligee. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3107. Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 28-3108, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by sections 16-501 through 16-584;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Section references. — This section is referred to in § 28-3108.

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3108. Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under section 28-3104(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 28-3107(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on, or a right to retain, any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section 28-3104(a)(2) or section 28-3105 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with sections 28:9-101 through 28:9-507.

(f) A transfer is not voidable under section 28-3105(b):

(1) To the extent the insider gave new value to, or for the benefit of, the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Section references. — This section is referred to in § 28-3107.

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3109. Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) Under section 28-3104(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was, or could reasonably have been discovered by the claimant;

(2) Under section 28-3104(a)(2) or section 28-3105(a), within 4 years after the transfer was made or the obligation was incurred; or

(3) Under section 28-3105(b), within 1 year after the transfer was made or the obligation was incurred. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3110. Supplementary provisions.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the laws relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement the provisions of this chapter. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — See note to § 28-3101.

§ 28-3111. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773.)

Legislative history of Law 11-83. — See note to § 28-3101.

CHAPTER 33. INTEREST AND USURY.

Sec.
28-3301. Rate of interest expressed in contract.
28-3302. Rate of interest not expressed and on judgments.
28-3303. Usury defined.
28-3304. Action to recover usury paid.
28-3305. Unlawful interest credited on principal debt.
28-3306. Parties compelled to testify.
28-3307. Council of the District of Columbia authorized to exempt certain mortgages and loans.
28-3308. Finance charge on direct installment loans.
28-3309. Council of the District of Columbia authorized to exempt certain loans, and to change rates of interest.
28-3310. Consumer protections.
28-3311. Definition of interest.
28-3312. Unlawful practices.
28-3313. Penalties.
28-3314. Right of action.

§ 28-3301. Rate of interest expressed in contract.

(a) Except as otherwise provided in this section, section 28-3308, and chapter 36 of this subtitle, the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at a rate not exceeding 24% per annum.

(b) It shall be lawful to contract for a rate of interest not exceeding 24% per annum on a loan or financial transaction which is secured by: (1) a first purchase mortgage or first purchase deed of trust on residential real property; (2) a first purchase security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; or (3) the assignment by way of a first security of the borrower's interest in the proprietary lease or first right of tenancy in property covered by such organization. The first sentence of this subsection shall apply only to a loan or financial transaction which is both contracted for and consummated after the effective date of the Interest Rate Ceiling Amendment Act of 1983 and for which no written commitment to make the loan or financial transaction at a lower rate of interest was issued by the lender to the borrower prior to the effective date of the Interest Rate Ceiling Amendment Act of 1983.

(c) It shall be lawful to contract for a rate of interest not exceeding 24% per annum on a loan or financial transaction which is secured directly or indirectly by: (1) a mortgage or deed of trust, other than a first purchase mortgage or first purchase deed of trust, on residential real property; (2) a security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; or (3) the assignment by way of a security, other than a first security interest, of the borrower's interest in the proprietary lease or first right of tenancy in property covered by such organization. The first sentence of this subsection shall apply only to a loan or financial transaction which is both contracted for and consummated after the effective date of the Interest Rate Ceiling Amendment Act of 1983 and for which no written commitment to make the loan or financial transaction at a lower rate of interest was issued by the lender to the borrower prior to the effective date of the Interest Rate Ceiling Amendment Act of 1983.

(d) Notwithstanding any other provision of this chapter:

(1) any loan, except a loan which is secured directly or indirectly by a mortgage or deed of trust on residential real property, or by a security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization, or by the assignment by the way of a security of the borrower's interest in the proprietary lease or right of tenancy in property covered by a cooperative housing organization and the residential real property or cooperative is the place of residence of the borrower, where the borrower receives the use of an amount in excess of $1,000 shall not be subject to the provisions of this chapter and it shall be lawful to contract for, or receive, any rate of interest thereon if any of the following conditions are satisfied:

(A) the borrower is a not for profit corporation, whether organized under the laws of the United States, the District of Columbia, or any other jurisdiction; or

(B) the borrower is an individual, group of individuals, corporation, unincorporated association, partnership, or other entity, and the loan is made for the purpose of acquiring or carrying on a business, professional, or commercial activity; or

(C) the borrower is an individual, a group of individuals, corporation, unincorporated association, partnership, or any other entity, and the loan is made for the purpose of acquiring any real or personal property as an investment or for carrying on an investment activity; or

(D) the borrower is a religious society, as referred to in sections 29-901 through 29-916, and the loan is made for the purpose of acquiring or making an improvement on any real or personal property for purposes other than commercial or investment activities.

(2) any loan where the borrower receives the use of an amount in excess of $1,000 which is secured directly or indirectly by a mortgage or deed of trust on residential real property, or by a security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization, or by the assignment by the way of a security of the borrower's interest in the proprietary lease or right of tenancy in property covered by a cooperative housing organization and the residential real property or cooperative is the place of residence of the borrower, shall only be subject to the provisions of D.C. Code, sections 28-3301(f), 28-3310, 28-3311, 28-3312, 28-3313, and 28-3314, and it shall be lawful to contract for any rate of interest thereon if any of the conditions set forth in D.C. Code, section 28-3301(d)(1)(A), (B), (C), or (D) are satisfied.

(3) a lender shall not require a borrower to make any sworn statement or characterization that the loan meets the requirements of subsections(d)(1)(A), (B), (C), or (D) of this section if such statement or characterization is not true. Nothing contained in this subsection shall be construed to limit a lender's right to request information from the borrower which enables a lender to make a determination that the loan meets the requirements of subsections (d)(1)(A), (B), (C), or (D).

(e)(1) "Point" means a fee, premium, bonus, loan origination fee, service charge, or any other charge equal to 1% or less of the principal amount of a loan

which is charged by the lender at or before the time the loan is made as additional compensation for the loan. The term "point" shall not include any increase in the purchase price of the residential real property or the first purchase security interest in stock, or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization, or the borrower's interest in a proprietary lease or first right of tenancy in the property covered by such organization which is charged by the seller (i) to recover the cost of compensation to a lender for agreeing to make a loan to the borrower which results in a reduction in the effective rate of interest charged to the borrower or (ii) in the case of a first purchase mortgage or first purchase deed of trust, to recover the cost to the seller of his agreement to reduce the effective rate of interest on the first purchase mortgage or first purchase deed of trust or (iii) any monies deposited by a borrower in a savings account to be applied to subsidize scheduled periodic payments on the loan or financial transaction.

(2) A lender may not charge a borrower more than 1 point unless the borrower agrees to pay additional points to a lender for the sole purpose of qualifying for and obtaining a loan or financial transaction at a lower rate of interest than would otherwise have been offered. The first sentence of this paragraph shall not apply to any loan or financial transaction which is described in subsection (d) or to any loan which is described in section 501(a)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, approved March 31, 1980 (96 Stat. 161; 12 U.S.C. § 1735f-7, note).

(f) A loan or financial transaction which is secured by a mortgage or deed of trust on residential real property, or a security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization, or the assignment by the way of security of the borrower's interest in the proprietary lease or right of tenancy in property covered by such organization shall meet all of the following requirements:

(1) the loan or financial transaction may be prepaid by the borrower at no penalty at any time following the expiration of 3 years from the execution of the loan or financial transaction. Within 3 years from the execution of the loan or financial transaction, no prepayment charge or penalty shall be contracted for or received which exceeds an amount equal to 2 months advance interest on the aggregate amount of all prepayments in excess of ⅓ of the amount of the original loan or financial transaction made in any 12 month period.

(2) any borrower who, on the date of execution of the loan or financial transaction, has made a downpayment equaling 20% or more of the total purchase price of the property or who has an equity interest in the property equal to or greater than 20% of the fair market value of the property shall not be required by the term of the loan to make advance payments of the real estate taxes or casualty insurance premiums to enable the lender to have funds on hand for disbursement for payment of such taxes or insurance premiums and such borrower shall be furnished with a separate statement, in writing, which clearly and conspicuously sets forth his right to pay such taxes and insurance premiums directly. Nothing contained in this paragraph shall be construed to prohibit the lender from obtaining, during any period during

which the loan is in default and in consideration for the lender not exercising some or all of the remedies to which it is entitled, a written agreement from the borrower to make such advance payments to enable the lender to have funds on hand for disbursement for payment of such taxes or insurance premiums.

(3) prior to the execution of the loan or financial transaction, the lender shall furnish the borrower a separate statement, in writing, which complies with the disclosure provisions of the Truth-In-Lending Act, as heretofore and hereafter amended, effective May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 et seq.), and the regulations and interpretations thereunder and, where applicable, a separate statement, in writing, which complies with the disclosure provisions of the Alternative Mortgage Transaction Parity Act of 1982, approved October 15, 1982 (96 Stat. 1545; 12 U.S.C. § 3801 et seq.), and the regulations and interpretations thereunder.

(g) The provisions of this chapter shall not apply to any international banking facility time deposit or international banking facility loan, but shall be governed solely by regulations promulgated by the Board of Governors of the Federal Reserve System. For purposes of this subsection the terms "international banking facility time deposit" and "international banking facility loan" shall have the same meaning as defined in part 204.8(a)(2) and (3), respectively, of Federal Reserve System Regulation D (12 CFR 204.8(a)(2) and (3)) (1983). (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1; Dec. 17, 1971, 85 Stat. 665, Pub. L. 92-200, § 1; 1973 Ed., § 28-3301; Nov. 20, 1979, D.C. Law 3-38, § 2, 26 DCR 2183; July 1, 1980, D.C. Law 3-73, § 2, 27 DCR 2270; Sept. 17, 1982, D.C. Law 4-150, § 302, 29 DCR 3377; Mar. 14, 1984, D.C. Law 5-62, § 2, 31 DCR 114; Apr. 23, 1985, D.C. Law 6-2, § 2, 32 DCR 1477; June 4, 1985, D.C. Law 6-5, § 2, 32 DCR 2084.)

Cross references. — As to interest and charges permitted under the money lenders law, see Chapter 7 of Title 26.

As to consumer protections, see § 28-3310.

As to definition of interest, see § 28-3311.

As to unlawful practices, see § 28-3312.

As to penalties for violation of chapter, see § 28-3313.

As to right of action for violation of chapter, see § 28-3314.

As to restrictions on acquisition of land by religious societies, see § 29-901.

Section references. — This section is referred to in §§ 2-1910, 28-3303, 28-3311, 35-1551, and 45-2803.

Legislative history of Law 3-38. — Law 3-38, the "Interest Rate Modification Act of 1979," was introduced in Council and assigned Bill No. 3-172, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 23, 1979 and November 11, 1979, respectively. Signed by the Mayor on November 11, 1979, it was assigned Act No. 3-119 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-73. — Law 3-73, the "Cooperative Loan Interest Rate Modification Act of 1980," was introduced in Council and assigned Bill No. 3-223, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first and second readings on March 4, 1980, April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-182 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-150. — Law 4-150, the "International Banking Facilities Tax, District of Columbia Redevelopment Act of 1945 Amendment, and Cable Television Communications Act of 1981 Technical Clarification Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-360, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-62. — Law 5-62, the "Interest Rate Ceiling Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-193, which was referred to

the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 15, 1983, and December 6, 1983, respectively. Signed by the Mayor on December 23, 1983, it was assigned Act No. 5-93 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-2. — Law 6-2, the "Interest Rate Ceiling Amendment Act of 1983 Clarification Act of 1985 Temporary Act of 1985," was introduced in Council and assigned Bill No. 6-76. The Bill was adopted on first and second readings on January 16, 1985, and February 12, 1985, respectively. Signed by the Mayor on February 28, 1985, it was assigned Act No. 6-12 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-5. — Law 6-5, the "Interest Rate Ceiling Amendment Clarification Act of 1985," was introduced in Council and assigned Bill No. 6-82, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 12, 1985, and March 26, 1985, respectively. Signed by the Mayor on April 10, 1985, it was assigned Act No. 6-17 and transmitted to both Houses of Congress for its review.

References in text. — The "Interest Rate Ceiling Amendment Act of 1983", referred to in the last sentences of subsections (b) and (c), is D.C. Law 5-62. The effective date of that Act is March 14, 1984.

Application of Law 4-150. — Section 404(a) of D.C. Law 4-150 provided that the provisions of the act shall apply retroactively to international banking facilities in the District of Columbia after December 2, 1981.

Application of Law 5-62. — See note to § 28-3310.

Mayor authorized to issue regulations. — Section 401 of D.C. Law 4-150 provided that the Mayor shall issue regulations necessary to carry out the provisions of the act.

Former paragraph (b)(4) preempted by federal law. — Former paragraph (b)(4) of this section conflicted regulation 12 C.F.R. § 545.8-3(b) (now reserved) (1981) of the former Federal Home Loan Bank Board (see 12 U.S.C. § 1437 notes), so that the statutory provision was preempted by federal law. Goudreau v. Standard Fed. Sav. & Loan Ass'n, App. D.C., 511 A.2d 386 (1986).

Purpose of former paragraph (b)(4). — The limitation of escrow accounts which formerly appeared in subsection (b)(4) of this section was adopted as a consumer protection provision. Goudreau v. Standard Fed. Sav. & Loan Ass'n, App. D.C., 511 A.2d 386 (1986).

Applicability of exceptions in subsection (d). — Where a note was not related to carrying on any investment activity or to acquiring any investment property did not fall within the exceptions to the usury statute appearing in subsection (d) of this section. Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

Usury laws inapplicable to late charges on tenant. — Late charges imposed on tenant are not interest on a loan and thus the usury laws are inapplicable. Armfield v. Poretsky Mgt., Inc., 112 WLR 2357 (Super. Ct. 1984).

Accrual of action for damages not prerequisite for court declaration. — A court may declare the legality of interest computation methods and the usuriousness of rates of interest prescribed in loan agreements even if no cause of action for damages has accrued. Torosian v. National Capital Bank, 411 F. Supp. 167 (D.D.C. 1976).

Credit cards. — Financial institutions that issue credit cards which are honored by independent merchants are entitled to the same exemption from usury laws as are enjoyed by retailers who operate their own charge account plans. Kass v. Central Charge Serv., Inc., App. D.C., 304 A.2d 632 (1973).

Bonus paid to a creditor for the continued use of money is interest, so that the amount the maker paid to extend the instrument constitutes interest, and should be considered as interest in determining whether the extension contract is usurious. Pazianos v. Schenker, App. D.C., 366 A.2d 440 (1976).

De minimis overcharge. — An interest overcharge from a loan officer's failure to follow instructions not to deviate from charts that set forth loan terms is de minimis and excusable as inadvertent on the part of a bank. Torosian v. National Capital Bank, 411 F. Supp. 167 (D.D.C. 1976).

Payment of discount fees. — Where difference between face amount of the note and the actual loan amount represented a discount fee, which the parties agree was in fact, interest, the note was for a 2-year period with an option to extend the maturity date for an additional 2 years upon payment of an extension fee, and the deed of trust made reference to the execution of the promissory note, the indebtedness, and the interest rate of 10%, but did not incorporate the note, the rate of interest exceeded the legal limits imposed by District of Columbia law and enforcement of the deed of trust was barred to the extent that any balance included usurious sums. Needle v. Hoyte, App. D.C., 644 A.2d 1369 (1994).

Usurious loan defined. — A loan is usurious if the total interest exceeds the amount which would have been collected if the maximum lawful rate of interest had been charged over the entire period of the loan. Montgomery Fed. Sav. & Loan Ass'n v. Baer, App. D.C., 308 A.2d 768 (1973); Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270 (D.D.C. 1974).

Intent to commit usury can be inferred where holders of a note were directly involved

in negotiations that culminated in an extension agreement which specifically agreed to extend due date of final payment in return for the usurious extension fee. Pazianos v. Schenker, App. D.C., 366 A.2d 440 (1976).

Exemption denied where lenders have actual knowledge that loan is for consumer purposes. — Provisions of this section plainly deny exemption from the section to lenders who know the loan is for consumer purposes regardless of representations to the contrary by the borrower. Thompson v. Seton Invs., App. D.C., 533 A.2d 1255 (1987).

Failure to take the declining principal balance into account can taint a loan with usury if it results in actual interest rates in excess the maximum rates allowed under this section. Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270 (D.D.C. 1974).

Sale of property on credit at a price that exceeds the cash price by more than legal rate of interest does not constitute usury since the seller may fix one price for cash and another for credit. Morris v. Capitol Furn. & Appliance Co., App. D.C., 280 A.2d 775 (1971).

Prejudgment interest on partnership debt. — Trial judge permissibly awarded prejudgment interest on partnership debt. Warren v. Chapman, App. D.C., 535 A.2d 856 (1987).

Cited in Urciolo v. Nash, App. D.C., 211 A.2d 769 (1965); Lee v. HFC, App. D.C., 263 A.2d 635 (1970); Kass v. Garfinckel, Brooks Bros., Miller & Rhoads, Inc., App. D.C., 299 A.2d 542 (1973); Caruso v. Hollander, App. D.C., 363 A.2d 297 (1976); Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Ali Baba Co. v. Wilco, Inc., App. D.C., 482 A.2d 418 (1984); Finance Am. Corp. v. Moyler, App. D.C., 494 A.2d 926 (1985); Nelson v. Nationwide Mtg. Corp., 659 F. Supp. 611 (D.D.C. 1987); Singer v. Shannon & Luchs Co., 670 F. Supp. 1024 (D.D.C. 1987), cert. denied, 493 U.S. 822, 110 S. Ct. 81, 107 L. Ed. 2d 46 (1989); Reidy v. Meritor Sav., 705 F. Supp. 39 (D.D.C.), aff'd, 888 F.2d 898 (D.C. Cir. 1989); Zanville v. Garza, App. D.C., 561 A.2d 1000 (1989); Lehndorff U.S.A. (Cent.) Ltd. v. 1330 19th St. Corp., 117 WLR 1385 (Super. Ct. 1989); Askin v. Dustin, 122 WLR 2053 (Super. Ct. 1994).

§ 28-3302. Rate of interest not expressed and on judgments.

(a) The rate of interest in the District upon the loan or forbearance of money, goods, or things in action in the absence of expressed contract, is 6% per annum.

(b) Interest, when authorized by law, on judgments or decrees against the District of Columbia, or its officers, or its employees acting within the scope of their employment, is at the rate of not exceeding 4% per annum.

(c) The rate of interest on judgments and decrees, where the judgment or decree is not against the District of Columbia, or its officers, or its employees acting within the scope of their employment or where the rate of interest is not fixed by contract, shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C. § 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly ½ of 1%, increased to the next highest full percent; provided, that a court of competent jurisdiction may lower the rate of interest under this subsection for good cause shown or upon a showing that the judgment debtor in good faith is unable to pay the judgment. In the case of the judgments entered prior to the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, that are not satisfied until after the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, the rate of interest thereon shall be the rate of interest prescribed in this subsection from the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, until the date of satisfaction. (Aug. 30, 1964, 78 Stat. 765, Pub. L. 88-509, § 1; 1973 Ed., § 28-3302; Mar. 10, 1982, D.C. Law 4-70, § 2, 28 DCR 5236;

June 4, 1982, D.C. Law 4-112, § 9, 29 DCR 1687; Dec. 16, 1987, D.C. Law 7-61, § 2, 34 DCR 7089; Mar. 9, 1988, D.C. Law 7-82, § 2, 34 DCR 8117.)

Cross references. — As to interest and charges permitted under the money lenders law, see § 26-701 et seq.

As to right of dissenting shareholders to object to merger or consolidation of domestic insurance companies, see § 35-647.

Section references. — This section is referred to in §§ 1-1188.6, 2-1910, 35-647, 35-1551, and 36-1309.

Legislative history of Law 4-70. — Law 4-70, the "Consumer Credit Interest Rate Amendment Act of 1981," was introduced in Council and assigned Bill No. 4-138, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981, and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-117 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-112. — Law 4-112, the "Nonprofit Housing Developments' Water and Sanitary Sewer Service Rate Charges Reduction and the Consumer Credit Interest Rate Amendments Clarification Act of 1982," was introduced in Council and assigned Bill No. 4-193, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 9, 1982, and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-175 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-61. — Law 7-61, the "Rate of Interest on Judgments and Decrees Temporary Act of 1987," was introduced in Council and assigned Bill No. 7-313. The Bill was adopted on first and second readings on September 29, 1987, and October 13, 1987, respectively. Signed by the Mayor on October 26, 1987, it was assigned Act No. 7-94 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-82. — Law 7-82, the "Rate of Interest on Judgments and Decrees Act of 1987," was introduced in Council and assigned Bill No. 7-269, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1987, and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No. 7-117 and transmitted to both Houses of Congress for its review.

Repeal of Law 6-71. — Section 4 of D.C. Law 7-82 repealed the Rate of Interest on Judgments and Decrees Temporary Act of 1987, signed by the Mayor on October 26, 1987 (Act 7-94), D.C. Law 7-61.

References in text. — The "Consumer Credit Interest Rate Amendment Act of 1981", referred to throughout subsection (c), is D.C. Law 4-70.

Application of Law 7-82. — Section 3 of Law 7-82 provided that § 2 shall apply to interest rates on judgments and decrees entered after July 1, 1987.

This section does not offend the Constitution. District of Columbia v. Mitchell, App. D.C., 533 A.2d 629 (1987).

Contractual rate of interest controls. — Under § 15-108 the rate of interest agreed upon and fixed by the parties in the contract controls, rather than the statutory rate of interest specified in this section. Giant Food, Inc. v. Jack I. Bender & Sons, App. D.C., 399 A.2d 1293 (1979).

Limitation on prejudgment rate of interest. — Absent an express contractual provision to the contrary, a court may not award prejudgment interest greater than that allowed by this section. General Ry. Signal Co. v. Washington Metro. Area Transit Auth., 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990).

The statutory limit on prejudgment interest expressed in this section applies with equal force to both liquidated and unliquidated sums under §§ 15-108 and 15-109. — Just as the trial court cannot award interest at a rate greater than 6% under § 15-108, it also cannot under § 15-109, unless an express contractual provision is to the contrary. District of Columbia v. Pierce Assocs., App. D.C., 527 A.2d 306 (1987).

Statement of court's reasons for awarding particular rate of prejudgment interest. — Court's award of prejudgment interest at 8%, without any explanation of why it chose that rate, would normally require a remand to enable the trial court to state its reasons for deciding on 8%, rather than the percentage urged by the estate or the percentage indicated in subdivision (a). Duggan v. Keto, App. D.C., 554 A.2d 1126 (1989).

Interest on restitution. — Attorney who was ordered to pay restitution in the amount of $500 to client was charged with interest at the legal rate of 6% since he had retained client's money for more than 3 years without doing anything at all on her behalf. In re Dietz, App. D.C., 633 A.2d 850 (1993).

Federal preemption. — This section is preempted by the Fair Labor Standards Act (FLSA) and 28 U.S.C. § 1961 where plaintiffs prevail against the District in an action under the FLSA. Harrison v. District of Columbia, 704 F. Supp. 244 (D.D.C. 1988).

No sovereign immunity from interest awards. — Unlike the federal government, the District of Columbia does not enjoy sovereign immunity from interest awards. Bailey v. District of Columbia, 839 F. Supp. 888 (D.D.C. 1993).

Waiver during litigation permitted. — Since this section permits parties to waive the 6% limitation by contract, there is no reason why they also cannot waive it by agreement during litigation. United States Indus., Inc. v. Blake Constr. Co., 671 F.2d 539 (1982), aff'd, 765 F.2d 195 (D.C. Cir 1985).

Effect of jury determination. — By agreeing to let a jury determine the interest rate, a party waives its right to invoke the statutory limitation of 6%. United States Indus., Inc. v. Blake Constr. Co., 671 F.2d 539 (1982), aff'd, 765 F.2d 195 (D.C. Cir. 1985).

Liability "relatively certain." — Since a district court granted plaintiffs' motion for summary judgment and found defendants liable for plaintiffs' reasonable attorney's fees and costs, defendants should have known that it was "relatively certain" that they would be liable for much of plaintiff's attorney's time at a rate of $200 per hour or $150 per hour, an amount under dispute. Bailey v. District of Columbia, 839 F. Supp. 888 (D.D.C. 1993).

Cited in Silver Hill Concrete Corp. v. Thomason Indus. Corp., 556 F. Supp. 291 (D.D.C. 1982), aff'd, 704 F.2d 1294 (D.C. Cir. 1983); Turgeon v. Howard Univ., 571 F. Supp. 679 (D.D.C. 1983); Massachusetts Law Reform Inst., Inc. v. Legal Servs. Corp., 601 F. Supp. 415 (D.D.C. 1984); General Ry. Signal Co. v. Washington Metro. Area Transit Auth., 625 F. Supp. 22 (D.D.C. 1985), aff'd, 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990); Finance Am. Corp. v. Moyler, App. D.C., 494 A.2d 926 (1985); Williams v. Williams, App. D.C., 495 A.2d 754 (1985); King v. Palmer, 641 F. Supp. 186 (D.D.C. 1986); Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986); Graham, Van Leer & Elmore Co. v. Jones & Wood, Inc., 656 F. Supp. 667 (D.D.C. 1987); Strand v. Frenkel, 115 WLR 2205 (Super. Ct. 1987); Williams v. Williams, App. D.C., 554 A.2d 791 (1989); District of Columbia v. C.J. Langenfelder & Son, App. D.C., 558 A.2d 1155 (1989); Riggs Nat'l Bank v. District of Columbia, App. D.C., 581 A.2d 1229 (1990); McCray v. District of Columbia, 121 WLR 997 (Super. Ct. 1993); Askin v. Dustin, 122 WLR 2053 (Super. Ct. 1994); Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

§ 28-3303. Usury defined.

If a person or corporation contracts in the District,

(1) verbally, to pay a greater rate of interest than 6% per annum, or

(2) in writing, to pay a greater rate than is permitted under section 28-3301 or 28-3308 or under Chapter 36 of this subtitle, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not affect sections 26-701 to 26-712. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1; Dec. 17, 1971, 85 Stat. 665, Pub. L. 92-200, § 2; 1973 Ed., § 28-3303.)

Cross references. — As to authority of Council to exempt certain mortgages and loans, see § 28-3307.

As to corporations created under Chapter 3 of Title 29 prohibited from pleading statutes against usury in any action, see § 29-304.

As to pleading usury as a defense, see §§ 29-820 and 29-304.

As to exemption of institutions of higher education, see § 29-820.

As to exemption of cooperative associations, see § 29-1143.

Section references. — This section is referred to in § 2-1910.

References in text. — Sections 26-701 to 26-712, referred to in the last paragraph of this section, refer to the Act of Feb. 4, 1913, as amended, and as translated to the 1981 edition.

This provision applies only to contracts made in District, and the Court of Appeals is bound by its plain meaning. Finance Am. Corp. v. Moyler, App. D.C., 494 A.2d 926 (1985).

Accrual of action for damages not prerequisite for court declaration. — A court may declare the legality of interest computation methods and the usuriousness of rates of interest prescribed in loan agreements even if no cause of action for damages has accrued. Torosian v. National Capital Bank, 411 F. Supp. 167 (D.D.C. 1976).

Loan Shark Act of 1913. — Though the Loan Shark Act of 1913 was primarily intended to regulate and limit the business of making small loans for security, it is not an amendment or exception to the usury statute. American Sec. & Trust Co. v. Equitable Life Ins. Co., 461 F.2d 158 (D.C. Cir. 1971).

Credit cards. — Financial institutions that

issue credit cards which are honored by independent merchants are entitled to the same exemption from usury laws as are enjoyed by retailers who operate their own charge account plans. Kass v. Central Charge Serv., Inc., App. D.C., 304 A.2d 632 (1973).

Bonus paid to a creditor for the continued use of money is interest, so that the amount the maker paid to extend the instrument constitutes interest, and should be considered as interest in determining whether the extension contract is usurious. Pazianos v. Schenker, App. D.C., 366 A.2d 440 (1976).

De minimis overcharge. — An interest overcharge from a loan officer's failure to follow instructions not to deviate from charts that set forth loan terms is de minimis and excusable as inadvertent on the part of a bank. Torosian v. National Capital Bank, 411 F. Supp. 167 (D.D.C. 1976).

Usurious loan defined. — A loan is usurious only if the total interest exceeds the amount which would have been collected if the maximum lawful rate of interest had been charged over the entire period of the loan. Montgomery Fed. Sav. & Loan Ass'n v. Baer, App. D.C., 308 A.2d 768 (1973).

Intent to commit usury can be inferred where holders of a note were directly involved in negotiations that culminated in an extension agreement which specifically agreed to extend due date of final payment in return for the usurious extension fee. Pazianos v. Schenker, App. D.C., 366 A.2d 440 (1976).

Usurer cannot conceal his handiwork by avoiding the term "interest." Fuller v. Universal Acceptance Corp., App. D.C., 264 A.2d 506 (1970).

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. Oliver v. United Mtg. Co., App. D.C., 230 A.2d 722 (1967).

Sale of property on credit at a price that exceeds the cash price by more than legal rate of interest does not constitute usury since the seller may fix one price for cash and another for credit. Morris v. Capitol Furn. & Appliance Co., App. D.C., 280 A.2d 775 (1971).

Defense of usury attacks the original transaction as not bona fide. — Universal Acceptance Corp. v. Marzullo, App. D.C., 260 A.2d 90 (1969).

Cited in Lee v. HFC, App. D.C., 263 A.2d 635 (1970); Simmons v. Central Charge Serv., Inc., App. D.C., 269 A.2d 850 (1970); Kass v. Garfinckel, Brooks Bros., Miller & Rhoads, Inc., App. D.C., 299 A.2d 542 (1973); Askin v. Dustin, 122 WLR 2053 (Super. Ct. 1994).

§ 28-3304. Action to recover usury paid.

If a person or corporation in the District directly or indirectly takes or receives a greater amount of interest than is declared by this chapter to be lawful, whether in advance or not, the person or corporation paying the same may within one year after the date of payment sue for and recover the amount of the unlawful interest so paid. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3304.)

Action within 1 year required. — An action to recover a usurious portion of interest would have to be brought within 1 year of date of payment of interest under this section. Katz v. Simcha Co., App. D.C., 246 A.2d 555 (1968).

Statute of limitations for Racketeer Influenced and Corrupt Organizations claim. — Although plaintiff's claim under the Racketeer Influenced and Corrupt Organizations law was similar to an action to recover usurious interest, the presence of fraud and misrepresentation made the 3-year fraud statute of limitations more appropriate. Lawson v. Nationwide Mtg. Corp., 628 F. Supp. 804 (D.D.C. 1986).

Cited in Simmons v. Central Charge Serv., Inc., App. D.C., 269 A.2d 850 (1970); Caruso v. Hollander, App. D.C., 363 A.2d 297 (1976); Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

§ 28-3305. Unlawful interest credited on principal debt.

In an action upon a contract for the payment of money with interest at a rate forbidden by law, any payment of interest that may have been made on account of the contract is deemed to be payment made on account of the principal debt; and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid. A bona fide indorsee of

negotiable paper purchased before due is not affected by any usury exacted by a former holder of the paper unless he had notice of the usury before his purchase. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3305.)

Forfeiture of interest charged under the original obligation is not required although the fee charged in connection with the extension of a note rendered it usurious. Pazianos v. Schenker, App. D.C., 366 A.2d 440 (1976).

§ 28-3306. Parties compelled to testify.

When in an action to recover a debt the defendant claims that payment of unlawful interest on the debt has been made to the plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received the unlawful interest may be examined as a witness to prove the payment, and may not be excused from testifying in relation thereto. A creditor who is made defendant in a proceeding for discovery as to payments of unlawful interest made to him may not be excused from answering. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3306.)

§ 28-3307. Council of the District of Columbia authorized to exempt certain mortgages and loans.

The Council of the District of Columbia is authorized from time to time to provide by regulation for the exemption from the provisions of this chapter of any mortgage or loan insured or guaranteed under the National Housing Act or Chapter 37 of Title 38, United States Code, the interest rate of which is subject to regulation by an officer or agency of the Federal Government. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal shall affect any such loan or mortgage lawfully made or committed to be made while such exemption is in effect. (Aug. 20, 1970, 84 Stat. 828, Pub. L. 91-385, § 2(a); 1973 Ed., § 28-3307.)

References in text. — The National Housing Act, referred to in the first sentence of this section, is codified in 12 U.S.C. § 1701 et seq.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1979: The "Interest Rate Extension and Modification Act of 1978" (D.C. Law 2-140, Mar. 3, 1979, 25 DCR 5473).

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 28-3308. Finance charge on direct installment loans.

(a) On a loan (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this subtitle) to be repaid in equal or substantially equal monthly or other periodic installments,

including a loan obtained by using a check, credit card, or other device to access a line of credit, any federally insured bank or savings and loan association doing business in the District of Columbia may contract for and receive interest at the rate permitted under this chapter or, in lieu of such interest, a finance charge, which if expressed as an annual percentage rate, does not exceed a rate of 24% per annum on the unpaid balances of the principal. This section does not limit or restrict the manner of contracting for the finance charge, whether by way of discount, add-on, or simple interest, so long as the annual percentage rate of the finance charge does not exceed that permitted by this section.

(b) If such installment loan is precomputed,

(1) the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(2) except as provided in subsection (c), upon prepayment in full of the unpaid balance of a precomputed direct installment loan, refinancing, or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than $1, no rebate need be made.

(c) Upon prepayment in full of such direct installment loan other than a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this section if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the smaller of the following: (1) the amount of the finance charge contracted for, or (2) $5 in a transaction which had a principal of $75 or less, or $7.50 in a transaction which had a principal of more than $75.

(d) The unearned portion of the finance charge is a fraction of the finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which the prepayment occurs, and the denominator is the sum of all periodic balances under either the related loan agreement or, if the balance owing resulted from a refinancing or a consolidation, under the related refinancing agreement or consolidation agreement.

(e) As used in this section, "finance charge", and "annual percentage rate" shall have the respective meanings under the provisions of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. § 1601 et seq.) and the regulations and interpretations thereunder; and "federally insured bank or savings and loan association" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an "insured institution" as defined in section 401 of the National Housing Act. (Dec. 17, 1971, 85 Stat. 665, Pub. L. 92-200, § 3; 1973 Ed., § 28-3308; Nov. 20, 1979, D.C. Law 3-38, § 3, 26 DCR 2183; Mar. 10, 1982, D.C. Law 4-70, § 3, 28 DCR 5236; Mar. 14, 1984, D.C. Law 5-62, § 3, 31 DCR 114.)

Section references. — This section is referred to in §§ 28-3301, 28-3303, and 28-3802.

Legislative history of Law 3-38. — Law 3-38, the "Interest Rate Modification Act of 1979," was introduced in Council and assigned Bill No. 3-172, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 23, 1979 and November 11, 1979, respectively. Signed by the Mayor on November 11, 1979, it was assigned Act No. 3-119 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-70. — Law 4-70, the "Consumer Credit Interest Rate Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-138, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981, and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-117 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-62. — See note to § 28-3301.

References in text. — Section 3 of the Federal Deposit Insurance Act and section 401 of the National Housing Act, both referred to in subsection (e) of this section, are codified in 12 U.S.C. §§ 1813 and 1724, respectively. 12 U.S.C. 1724 was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

Application of Law 5-62. — See note to § 28-3310.

Rebate requirement precluded characterizing full payment upon acceleration as "charge." — The rebate requirement of subsection (b) precluded characterizing a payment in full required upon acceleration of a debt as a "charge" within the meaning of 15 U.S.C. § 1638(a)(10) and Regulation Z, § 226.8(b)(4), relating to consumer installment contract disclosure statements. Price v. Franklin Inv. Co., 574 F.2d 594 (D.C. Cir. 1978).

Cited in Sterling Mirror of Md., Inc. v. Gordon, App. D.C., 619 A.2d 64 (1993).

§ 28-3309. Council of the District of Columbia authorized to exempt certain loans, and to change rates of interest.

The Council of the District of Columbia is authorized from time to time to provide by regulation for (1) the exemption from the provisions of this chapter of any loan or financial transaction, and (2) the change of any interest rate specified in this chapter. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal relating to any exemption made under authority of this section shall affect any such loan or financial transaction lawfully made or entered into while such exemption is in effect. (1973 Ed., § 28-3309; Dec. 29, 1973, 87 Stat. 945, Pub. L. 93-229, § 1(a).)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of the Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Needle v. Hoyte, App. D.C., 644 A.2d 1369 (1994).

§ 28-3310. Consumer protections.

(a)(1) A lender who receives scheduled periodic payments on more than 5 loans or financial transactions in a calendar year shall furnish to the borrower, upon request, but not more than 2 times a year, a statement, in writing stating the amount of:

(A) payments credited to reducing the principal;

(B) payments credited to interest;

(C) the remaining unpaid principal balance;

(2) A lender who receives scheduled periodic payments on more than 5 loans or financial transactions in a calendar year shall furnish to the borrower, at least 6 months and not more than 12 months prior to maturity of the loan

or financial transaction, or, if the loan or financial transaction is for a period of less than 1 year, halfway through the loan period, a statement, in writing, stating the following:

(A) in the case of a loan or financial transaction which contains a schedule of payments under which each payment is not equal to, or substantially equal to, the other payments or if the intervals between payments are not substantially equal, the date or event upon which maturity occurs, and the projected principal loan balance that will be due at maturity of the loan or financial transaction; and

(B) in the case of a loan or financial transaction where the interest rate is not fixed for the term of the loan, the projected principal loan balance that will be due at maturity, assuming no change in the interest rate, and the conditions under which the interest rate may change and what limits or restrictions, if any, apply to changes in the interest rate.

(b) No delinquent or late charge shall be contracted for or received which does not meet all of the following requirements:

(1) the delinquency shall have continued for at least 10 calendar days;

(2) a delinquent or late charge shall not have already been charged for the same delinquent or late periodic installment; and

(3) the delinquent or late charge shall not exceed 5% of the total amount of the delinquent or late periodic installment of principal and interest. (Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in § 28-3301.

Legislative history of Law 5-62. — See note to § 28-3301.

Application of Law 5-62. — Section 6(a) of D.C. Law 5-62 provided that the repeal or amendment by the act of any provision of law shall not affect any act done or any right accrued, or any proceeding commenced in any civil cause before the repeal or amendment and all rights and liabilities under the repealed or amended act may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made. Section 6(b) of D.C. Law 5-62 provided that all offenses committed and penalties incurred under any provision of law repealed or amended by the act may be prosecuted and punished in the same manner and with the same effect as if such repeal or amendment had not been made.

Cited in Thompson v. Seton Invs., App. D.C., 533 A.2d 1255 (1987).

§ 28-3311. Definition of interest.

(a) For the purposes of this chapter, the word "interest" means any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee, origination fee, service and carrying charge, investigator's fee, and any amount payable as a discount under section 28-3301(e)(1), or point, or otherwise payable for services. The following charges shall not be considered interest:

(1) fees and charges collected at the direction of and actually paid to a government or governmental agency;

(2) a service charge for investigation and continued servicing of collateral for a commercial loan secured by inventory or accounts receivable and any compensating balance accounts required by a lender for a commercial loan;

(3) reasonable charges by the lender's attorney or other agent for service rendered in connection with collateral appraisals and the preparation, closing,

or disbursement of the loan, but only if the charges are an actual expense of the lender;

(4) premiums for credit life, accident, health, or loss-of-income insurance, but only if the insurance coverage is in fact not required by the lender and this fact is clearly and conspicuously disclosed; that the borrower signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph; and that the terms of and premiums for the insurance coverage are disclosed;

(5) premiums for insurance against loss of or damage to the property, or against liability arising out of the ownership or use of the property, but only if the lender does not in fact require that the insurance be purchased through a particular broker, agent or insurance company; that the insurance coverage may be obtained from a broker, agent or insurance company of borrower's choice, subject to approval by the lender, and this fact is clearly and conspicuously disclosed; and that if the insurance coverage is obtained from or through the lender, the term of and premiums for the insurance coverage are clearly and conspicuously disclosed;

(6) a service charge made by a broker or dealer dealing in investment securities if money is advanced on the security of pledged investment securities and if services are rendered in the collection, crediting, and disbursement of income on the investment securities and in the furnishing of income tax and other information in connection with that income;

(7) reasonable charges for investigation and reporting in regard to the credit rating or credit history of the borrower, but only if such charges are an actual expense of the lender; and

(8) advance payments of real estate taxes or casualty insurance premiums made in accordance with section 28-3301(f)(2).

(b) The rate of interest on any loan or financial transaction shall be calculated in compliance with the provisions of the Truth-in-Lending Act, as heretofore and hereafter amended, effective May 29, 1968 (82 Stat. 146; 15 U.S.C. 1601 et seq.), and the regulations and interpretations thereunder. (Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in §§ 28-3301 and 45-2803.

Legislative history of Law 5-62. — See note to § 28-3301.

Application of Law 5-62. — See note to § 28-3310.

Cited in Reidy v. Meritor Sav., 705 F. Supp. 39 (D.D.C.), aff'd, 888 F.2d 898 (D.C. Cir. 1989).

§ 28-3312. Unlawful practices.

It shall be a violation of this chapter for any lender to:

(1) misrepresent as to a material fact;

(2) fail to state a material fact;

(3) disparage the services or business of another by false or misleading representations of material facts;

(4) advertise or offer services without the intent to provide them or without the intent to provide them as advertised or offered;

(5) include in the loan or financial transaction agreement an acceleration clause under which any part or all of the unpaid balance of the loan or financial transaction not yet matured may be declared due and payable for any reason other than due to default by the borrower in the payment or in accordance with another term of the agreement; or

(6) include in the loan or financial transaction agreement any provision by which the borrower waives any right accruing to him under the provisions of this chapter. (Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in § 28-3301.

Legislative history of Law 5-62. — See note to § 28-3301.

Application of Law 5-62. — See note to § 28-3310.

Editor's notes. — This section is set forth exactly as enacted by D.C. Law 5-62.

Cited in Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

§ 28-3313. Penalties.

Any lender who wilfully violates any provision of this chapter shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than 1 year, or both. (Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in § 28-3301.

Legislative history of Law 5-62. — See note to § 28-3301.

Application of Law 5-62. — See note to § 28-3310.

§ 28-3314. Right of action.

Any borrower who suffers a violation of any provision of this chapter by any lender may bring an action in the Superior Court of the District of Columbia to recover, or obtain, or enforce any of the following:

(1) reasonable attorney's fees;

(2) actual and punitive damages; or

(3) any other relief which the court deems proper. (Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in § 28-3301.

Legislative history of Law 5-62. — See note to § 28-3301.

Application of Law 5-62. — See note to § 28-3310.

Editor's notes. — This section is set forth exactly as enacted by D.C. Law 5-62.

CHAPTER 35. STATUTE OF FRAUDS.

Sec.
28-3501. Estate created otherwise than by deed.
28-3502. Special promise to answer for debt or default of another.
28-3503. Declaration, grant, and assignment of trust.
28-3504. New promise or acknowledgement of contract — Action against joint contractors.
28-3505. New promise or acknowledgement of debt incurred during infancy.

§ 28-3501. Estate created otherwise than by deed.

An estate, attempted to be created for a greater term than one year in real estate, other than by deed, is an estate by sufferance. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3501.)

Cross references. — As to requiring estates in lands to be created by written instrument, see §§ 45-306 and 45-222.

Lease whose term is greater than a year must be in writing to satisfy this chapter. Union Travel Assocs. v. International Assocs., App. D.C., 401 A.2d 105 (1979).

Lease construed as any other contract. — Where lessor sought to collect monies which it alleged were due as a result of the breach of a lease agreement, the substantive rules of contract law govern, for leases of urban dwelling units are to be construed as any other contract. Management Partnership, Inc. v. Crumlin, App. D.C., 423 A.2d 939 (1980).

Requirements for oral modification of lease to be effective. — A written lease for a term of 1 year or less may be modified, rescinded, or discharged by mutual oral agreement, but to be effective, the mutual oral agreement must be by the original parties to the agreement or someone authorized to act in their stead. Management Partnership, Inc. v. Crumlin, App. D.C., 423 A.2d 939 (1980).

Partial or complete performance under oral contract may remove case from applicability of statute, although the statute provides that any agreement involving an interest in real estate which purportedly is for a term in excess of 1 year must be in writing to be enforceable. Landow v. Georgetown-Inland W. Corp., App. D.C., 454 A.2d 310 (1982).

Effect of written contract. — Absent a showing that an event occurred which had the legal effect of altering the original contract or discharging the parties thereto, the written contract, duly signed and executed by both parties, is binding upon the parties and controls their respective rights and liabilities. Management Partnership, Inc. v. Crumlin, App. D.C., 423 A.2d 939 (1980).

Defense of the statute of frauds is personal to the party to the contract and those in privity with him. Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

§ 28-3502. Special promise to answer for debt or default of another.

An action may not be brought to charge an executor or administrator upon a special promise to answer damages out of his own estate, or to charge the defendant upon a special promise to answer for the debt, default, or miscarriage of another person, or to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of real estate, of any interest in or concerning it, or upon an agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action is brought, or a memorandum or note thereof, is in writing, which need not state the consideration and signed by the party to be charged therewith or a person authorized by him. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3502.)

Intent of statute. — The statute of frauds' intent was not to invalidate any oral agreement in one of the enumerated classes, but merely to suspend its enforcement until the statute is satisfied by the reduction of it to writing. Hackney v. Morelite Constr., App. D.C., 418 A.2d 1062 (1980).

Statute devised as optional defense. — The statute of frauds was devised not as a mandatory directive to reduce to writing any oral contract which comes under the statute on pain of forever foregoing the right to enforce it, but, rather, as an optional defense that the party being charged may invoke to prevent the enforcement of unfounded claims against him. Hackney v. Morelite Constr., App. D.C., 418 A.2d 1062 (1980).

Defense of the statute of frauds is personal to the party to the contract and those in privity with him. Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

Burden of proving existence of contract. — In the case of a written offer, the offeree, suing on the contract and entering into evidence the written offer in satisfaction of the statute of frauds, continues to bear the burden of proving the existence of a contract on the terms contained in the document. Farrow v. Cahill, 663 F.2d 201 (D.C. Cir. 1980).

Statute of frauds does not require that "contract" itself be in writing or that the signature of the party to be charged be affixed to the writing as the operative, legally effective act of assent. Farrow v. Cahill, 663 F.2d 201 (D.C. Cir. 1980).

Statute of frauds is satisfied by letter which purports to repudiate or cancel an otherwise valid oral agreement, or which refuses to enter a written contract after an oral agreement was reached. Farrow v. Cahill, 663 F.2d 201 (D.C. Cir. 1980).

Memorandum satisfying statute of frauds may be made before contract is concluded. Farrow v. Cahill, 663 F.2d 201 (D.C. Cir. 1980).

Agreement modifications were not barred by statute of frauds. Clark v. Clark, App. D.C., 535 A.2d 872 (1987).

Alleged land sale contract did not satisfy statute of frauds. Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988).

Stipulations barred use of statute as defense. — Where stipulations were entered into by the parties, defendant was barred from asserting the statute of frauds as a defense if the facts its counsel stipulated to on its behalf at trial show that it in fact orally agreed to the contract sought to be enforced against it. Hackney v. Morelite Constr., App. D.C., 418 A.2d 1062 (1980); Anchorage-Hynning & Co. v. Moringiello, 697 F.2d 356 (D.C. Cir. 1983).

Because there is no meaningful difference between an admission in court and the trial stipulations, a defendant's admission through stipulations may bar him from asserting the statute of frauds. Anchorage-Hynning & Co. v. Moringiello, 697 F.2d 356 (D.C. Cir. 1983).

By admitting the existence of an oral contract in answer to a complaint, a party waives this opportunity to interpose the statute of frauds as a basis for either a motion to dismiss or for summary judgment. Wemhoff v. Investors Mgt. Corp. of Am., App. D.C., 455 A.2d 897 (1983).

Use of parol evidence restricted. — The essential terms of an agreement required to be in writing by virtue of the statute of frauds must be expressed in writing without resort to parol evidence. Educational Enters., Inc. v. Greening, App. D.C., 265 A.2d 287 (1970).

However, the parol evidence rule does not bar the introduction of parol evidence where a written agreement was not intended to be the complete statement of the agreement at the time it was signed. Mark Keshishian & Sons v. Washington Square, Inc., App. D.C., 414 A.2d 834 (1980).

Hardship incurred by reliance on oral agreement. — Statute of frauds is applicable to bar an action, notwithstanding any hardship incurred by claimants in reliance upon an oral agreement. Tauber v. Jacobson, App. D.C., 293 A.2d 861 (1972).

Partial or complete performance under an oral contract may remove the case from the applicability of the statute of frauds. Amberger & Wohlfarth, Inc. v. District of Columbia, App. D.C., 300 A.2d 460 (1973).

Oral partnership agreement does not run afoul of the statute of frauds where no term of years was ever fixed by agreement, nor did it convey any interest in land so as to place it within the statute of frauds. Cooper v. Saunders-Hunt, App. D.C., 365 A.2d 626 (1976).

Oral contract contemplating long-term employment is void under the statute of frauds. Gebhard v. GAF Corp., 59 F.R.D. 504 (D.D.C. 1973).

In order to bring an action pursuant to a long-term employment contract, the agreement would have to be in writing. Prouty v. National R.R. Passenger Corp., 572 F. Supp. 200 (D.D.C. 1983).

Oral contract taken out of statute of frauds where otherwise fraud would result. — An oral agreement to purchase land is taken out of the statute of frauds only when the purchaser has changed his position so materially that unless the oral contract is enforced, fraud will result. Landow v. Georgetown-Inland W. Corp., App. D.C., 454 A.2d 310 (1982).

Parol evidence rule does not bar oral statements prior to and contemporaneous with ambiguous written agreement if they explain, rather than contradict, the writing.

Launay v. Launay, Inc., App. D.C., 497 A.2d 443 (1985).

Modification of time of settlement in contract to convey real estate is material change of the original contract which cannot be accomplished without a writing. Landow v. Georgetown-Inland W. Corp., App. D.C., 454 A.2d 310 (1982).

Oral agreement susceptible of performance within 1 year. — Where an agreement is by its terms capable, possible, or susceptible of performance within 1 year, the statute of frauds does not apply and an oral agreement may suffice. Launay v. Launay, Inc., App. D.C., 497 A.2d 443 (1985).

Contract satisfies statute. — A letter stating the defendants would give the plaintiff an opportunity to become a tenant in contemplated shopping center with rental and terms at least equal to that of any other major store is sufficient evidence of unilateral contract to satisfy the statute of frauds. Ammerman v. City Stores Co., 394 F.2d 950 (D.C. Cir. 1968).

Itemized statement for services performed pursuant to an oral contract satisfies the statute of frauds. Coffin v. District of Columbia, App. D.C., 320 A.2d 301 (1974).

Contract to employ one for duration of his life or a contract to give one permanent employment is not within the Statute of Frauds for the reason that contracts of this description are deemed possible of performance within one year from their formation, since, for example, the employee may die within that period. Hodge v. Evans Fin. Corp., 823 F.2d 559 (D.C. Cir. 1987).

Writing must identify "essential terms" of, and parties to, contract. — Although the District of Columbia Statute of Frauds does not require that the "contract" itself be in writing, it does require that the writing set forth the "essential terms" of the agreement, and adequately identify the parties to the contract. Penick v. Frank E. Basil, Inc., 579 F. Supp. 160 (D.D.C.), aff'd, 744 F.2d 878 (D.C. Cir. 1984).

Two-year employment contract unenforceable where writings, a letter offer and a telex, failed to identify the alleged offeror and did not contain all the "essential terms" of the alleged contract. Penick v. Frank E. Basil, Inc., 579 F. Supp. 160 (D.D.C.), aff'd, 744 F.2d 878 (D.C. Cir. 1984).

Satisfaction of requirement that identity of buyer be established by signed writing. — Admission in the pleadings that defendant entered an agreement to sell real property was sufficient to satisfy the statute of frauds with respect to its requirement that the identity of the buyer be established by a signed writing. Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988).

Sufficiency of property description. — While a property description which refers to a street address is often sufficient to satisfy the statute of frauds, ambiguous description should not be permitted where the desirable public policy of certainty in land sale contracts is threatened and the interests of all the parties are not safeguarded. Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988).

Writing sufficient to satisfy statute of frauds. — Letter from defendant's attorney which purported to bind the corporation to pay certain claims sufficient to take the matter out of the operation of this section should not have been excluded for all purposes as an offer of compromise. Goon v. Gee Kung Tong, Inc., App. D.C., 544 A.2d 277 (1988).

Oral promise to answer for debt of another held enforceable where made to secure direct personal benefit for promisor. — See Charles E. Smith Mgt., Inc. v. Grier, 113 WLR 2397 (Super Ct. 1985).

Pretrial filing takes agreement outside statute. — Husband's filing of pretrial praecipe and withdrawing countersuit in divorce proceeding commenced by wife is sufficient to bring an oral agreement outside the statute of frauds. Brown v. Brown, App. D.C., 343 A.2d 59 (1975).

Cited in City Stores Co. v. Ammerman, 266 F. Supp. 766 (D.D.C. 1967), aff'd, 394 F.2d 950 (D.C. Cir. 1968); Gustin v. Stegall, App. D.C., 347 A.2d 917 (1975), cert. denied, 425 U.S. 974, 96 S. Ct. 2174, 48 L. Ed. 2d 798 (1976); Hudson v. Ashley, App. D.C., 411 A.2d 963 (1980); Goldstein v. S & A Restaurant Corp., 622 F. Supp. 139 (D.D.C. 1985); Interdonato v. Interdonato, App. D.C., 521 A.2d 1124 (1987).

§ 28-3503. Declaration, grant, and assignment of trust.

A declaration or creation of trust or confidence of real estate which is not in writing, signed by the party who is by law enabled to declare the trust or by his last will in writing, is void.

A grant or assignment of a trust or confidence which is not in writing, signed by the party granting or assigning it, or by his last will, is void.

Where a conveyance is made of real estate by which a trust or confidence is or may arise or result by the implication or construction of law, or is

transferred or extinguished by an act or operation of law, the trust or confidence is of the same effect as it would have been if this section had not been enacted. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1; 1973 Ed., § 28-3503.)

Cross references. — As to estates in land, see § 45-201 et seq.

As to conveyances, see § 45-301 et seq.

As to mortgages and deeds of trust, see § 45-701 et seq.

There may be resulting trust of partial interest in property. Edwards v. Woods, App. D.C., 385 A.2d 780 (1978).

Resulting trust proper unless court could determine intended interests of parties furnishing consideration. — Although the trial court's ruling that the defendant did not intend to give the plaintiff a beneficial interest in the entire property was not erroneous, the case was remanded for determination of the proportions of the parties' respective interests in the property based upon their intent or, if their intent could not be found, for recognition of a resulting trust in plaintiff's favor in the same proportion as the amount of consideration furnished by him. Edwards v. Woods, App. D.C., 385 A.2d 780 (1978).

Evidence of parties' conduct after creation of resulting trust is admissible for whatever light it might shed on their intent at the time of the disputed transaction. Haliday v. Haliday, 11 F.2d 565 (D.C. Cir. 1926); Edwards v. Woods, App. D.C., 385 A.2d 780 (1978).

Third party to agreement may not assert statute of frauds as defense. — A tenant, who was a stranger to a trust agreement and extension thereof between the original owners and purchasers of premises occupied by tenant, could not assert the statute of frauds as a defense to the oral extension of the agreement in order to maintain that the purchaser was not the owner, barring his suit for possession. B.D.S., Inc. v. Gillis, App. D.C., 477 A.2d 1121 (1984).

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

§ 28-3504. New promise or acknowledgement of contract — Action against joint contractors.

In an action upon a simple contract, an acknowledgement or promise by words only is not sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the statute of limitations or to deprive a party of the benefit thereof unless the acknowledgement or promise is in writing, signed by the party chargeable thereby. This section does not alter or take away, or lessen the effect of a payment of principal or interest made by any person. In actions against two or more joint contractors, or executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of the defendants, is nevertheless entitled to recover against any other defendant by virtue of a new acknowledgement, or promise, or otherwise, judgment may be given for the plaintiff as to that defendant. An indorsement or memorandum of a payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment is to be made, is not sufficient proof of the payment so as to take the case out of the operation of the statute of limitations. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 1; 1973 Ed., § 28-3504.)

Cross references. — As to statutes of limitations, see § 12-301 et seq.

Section not applicable to contemporaneous consideration. — This section does not apply to an arrangement having for its consideration, not simply moral obligation to honor an old debt, but a fresh contemporaneous consideration which would support a binding contract between parties. Nyhus v. Travel Mgt. Corp., 466 F.2d 440 (D.C. Cir. 1972).

Section contemplates exceptions besides written promise or acknowledgement. — A written promise or acknowledgement is not the exclusive escape route from the rigors of the limitations period; this section contemplates other exceptions, notably estoppel, to bar assertion of the statute of limitations. Dilbeck v. Murphy, App. D.C., 502 A.2d 466 (1985).

Acknowledgment of debt. — A distinct and unequivocal acknowledgment of debt as a subsisting personal obligation constitutes an implied promise to pay it and takes the contract out of the statute of limitations. Heffelfinger v. Gibson, App. D.C., 290 A.2d 390 (1972).

The traditional distinction between a setoff and a counterclaim does not preclude the defendant from invoking the doctrine of acknowledgement in rebuttal when the plaintiff asserts the statute of limitations to bar a counterdemand sounding in contract and relating to the very obligation, the duty to pay rent, upon which the plaintiff's suit is based. Griffith v. Butler, App. D.C., 571 A.2d 1161 (1990).

Although tenants sought equitable relief in defending against landlord's possessory action and did not seek a money judgment, their answer to the complaint asserted "expenditures claimed as credits against rent," which is one basis for a counterclaim specified by Super. Ct. L & T Rule 5(b), which clearly limits all tenants' counterdemands, regardless of whether denominated an equitable defense of recoupment or setoff or a counterclaim, to claims related to the demised premises, and because all cognizable defensive claims must pertain in some way to the rental obligation or the property, the significance of the common-law distinction between counterclaim and setoff has no importance in this context. Griffith v. Butler, App. D.C., 571 A.2d 1161 (1990).

Cited in Brown v. Lamb, 414 F.2d 1210 (D.C. Cir. 1969), cert. denied, 397 U.S. 907, 90 S. Ct. 904, 25 L. Ed. 2d 88 (1970); Western Union Tel. Co. v. Massman Constr. Co., App. D.C., 402 A.2d 1275 (1979); Flack v. Laster, App. D.C., 417 A.2d 393 (1980); Spellman v. American Sec. Bank, App. D.C., 504 A.2d 1119 (1986).

§ 28-3505. New promise or acknowledgement of debt incurred during infancy.

An action may not be maintained to charge a person upon an acknowledgment of, or promise to pay, a debt contracted during infancy, made after full age, except for necessaries, unless the acknowledgement or promise is in writing signed by the party to be charged therewith. This section does not affect ratification by conduct. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 1; 1973 Ed., § 28-3505.)

Cross references. — As to age of majority, see note following § 21-101.

Cited in Flack v. Laster, App. D.C., 417 A.2d 393 (1980).

CHAPTER 36. DIRECT MOTOR VEHICLE INSTALLMENT LOANS.

Sec.
28-3601. Direct motor vehicle installment loans.
28-3602. Finance charge.
28-3603. Definitions.

§ 28-3601. Direct motor vehicle installment loans.

The provisions of the Act approved April 22, 1960 (Public Law 86-431, 74 Stat. 69; D.C. Code, 1967 ed., Chapter 9 of Title 40), covering installment sales of motor vehicles, as amended, and the regulations issued thereunder, shall apply to the extent appropriate to, a direct installment loan, secured by a security interest in a motor vehicle, made by a federally insured bank or savings and loan association doing business in the District of Columbia, subject to section 28-3602. (Dec. 17, 1971, 85 Stat. 666, Pub. L. 92-200, § 4; 1973 Ed., § 28-3601.)

Cross references. — As to Automobile Consumer Protection Act, see Chapter 13 of Title 40.

References in text. — "Chapter 9 of Title 40" from the 1967 edition of the D.C. Code, is Chapter 11 of Title 40 in the 1981 edition.

Cited in Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

§ 28-3602. Finance charge.

Such a bank or savings and loan association may contract for and receive interest at the rate provided for in Chapter 33 of this subtitle or, in lieu of such interest, a finance charge which, if expressed as an annual percentage rate, does not exceed a rate of 21% per annum on the unpaid balances of principal. (Dec. 17, 1971, 85 Stat. 667, Pub. L. 92-200, § 4; 1973 Ed., § 28-3602; Mar. 10, 1982, D.C. Law 4-70, § 4, 28 DCR 5236.)

Section references. — This section is referred to in § 28-3601.

Legislative history of Law 4-70. — Law 4-70, the "Consumer Credit Interest Rate Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-138, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981, and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-117 and transmitted to both Houses of Congress for its review.

§ 28-3603. Definitions.

As used in this chapter, "finance charge" and "annual percentage rate" shall have the respective meanings under the provisions of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. 1601 et seq.) and the regulations and interpretations thereunder; and "federally insured bank or savings and loan association" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an "insured institution" as defined in section 401 of the National Housing Act. (Dec. 17, 1971, 85 Stat. 667, Pub. L. 92-200, § 4; 1973 Ed., § 28-3603.)

References in text. — Section 3 of the Federal Deposit Insurance Act and section 401 of the National Housing Act, both referred to in this section, are codified in 12 U.S.C. §§ 1813 and 1724, respectively. 12 U.S.C. § 1724 was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

CHAPTER 37. REVOLVING CREDIT ACCOUNTS.

Sec.
28-3701. Definitions.
28-3702. Amount and computation of credit service charge.

§ 28-3701. Definitions.

As used in this chapter —

(1) "revolving credit account" means an arrangement between a seller or financial institution and a buyer pursuant to which (A) the seller or financial institution may permit the buyer to purchase goods or services on credit from time to time, either directly from the seller or indirectly by use of a credit card or other device, whether issued by the seller or a financial institution, (B) the unpaid balances of amount financed arising from purchases and credit service and other appropriate charges are debited to an account, (C) a credit service charge if made is not precomputed but is computed on an outstanding unpaid balance of the buyer's account from time to time, and (D) the buyer has the privilege of paying the balances in full or in installments. The term "revolving credit account" shall not include loans obtained by a person from a financial institution where a check, credit card, or other device is used to access a line of credit.

(2) "credit service charge" means the sum of (A) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or financial institution as an incident to the extension of credit, including any of the following types of charges which are applicable: time-price differential, service, carrying, or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller or financial institution against the buyer's default or other credit loss, and (B) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit irrespective of the person to whom the charges are paid or payable, unless the seller or financial institution had no notice of the charges when the credit was granted.

(3) "seller" means a person engaged in the District of Columbia in the business of selling goods or services to retail buyers.

(4) "buyer" means a person who buys goods or obtains services from a seller pursuant to a retail credit sale and not principally for the purpose of resale; and includes a person who enters into a prior agreement with a financial institution whereby the latter agrees to pay the debts of the buyer as they accrue at various retail sellers, designated by the financial institution, in consideration of the buyer paying to the financial institution the cash sales price plus the credit service charge on the purchase.

(5) "person" includes any individual, partnership, corporation, association, trust, joint stock company, or any other group of persons however organized.

(6) "financial institution" means a person who enters into an agreement with a buyer whereby the former agrees to extend credit to the buyer and to

apply it as directed by the buyer pursuant to a credit card issued to the buyer by the financial institution; and this term includes any "insured bank" as defined in section 3 of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 873; 12 U.S.C. sec. 1813) or any "insured institution" as defined in section 401 of the National Housing Act, approved June 27, 1934 (12 U.S.C. sec. 1724; 48 Stat. 1255) and any subsidiary corporation which is wholly-owned by a financial institution doing business in the District. (Dec. 17, 1971, 85 Stat. 667, Pub. L. 92-200, § 4; 1973 Ed., § 28-3701; Mar. 10, 1982, D.C. Law 4-70, § 5, 28 DCR 5236.)

Section references. — This section is referred to in §§ 28-3802 and 28-3805.

Legislative history of Law 4-70. — Law 4-70, the "Consumer Credit Interest Rate Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-138, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981, and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-117 and transmitted to both Houses of Congress for its review.

References in text. — "12 U.S.C. 1724", referred to in (6), was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

Cited in Giant Food, Inc. v. Jack I. Bender & Sons, App. D.C., 399 A.2d 1293 (1979).

§ 28-3702. Amount and computation of credit service charge.

(a) The seller or financial institution may contract for the payment by the buyer of a credit service charge not exceeding that permitted by this section.

(b) A credit service charge may be made in each billing cycle. For the purpose of computing the outstanding balance subject to the credit service charge (1) the outstanding balance on any day shall consist of an amount which shall not exceed the sum of the total charges to the account less the amounts paid or credited to the account prior to such day, or (2) the outstanding balance may be computed by the average daily balance method. The credit service charge may also be computed for all outstanding balances within a range of not in excess of $10 on the basis of the median amount within such range if as so computed such credit service charge is applied to all outstanding balance within such range.

(c)(1) If the billing cycle is monthly, a credit service charge may be imposed in the maximum amount of 2%. If the billing cycle is not monthly, the maximum charge is that percentage which bears the relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than 4 days from month to month is "the same day of the billing cycle".

(2) Notwithstanding the terms of any revolving credit account or any other provision of law, a seller or financial institution, with respect to its revolving credit accounts may (A) impose or increase any credit service charge, (B) change the method of computing the balance upon which charges are imposed, or (C) increase the required minimum periodic payment; provided, that the seller or financial institution mails a written notice of the change to each affected buyer at least thirty (30) days before the effected date of the change; provided, further, that the seller or financial institution shall permit

each affected buyer to repay, under the existing terms, any debt incurred prior to the effective date of the change, unless the buyer incurs additional debt on or after that date or otherwise assents in writing to the changes. This paragraph does not authorize a seller or financial institution to impose a credit service charge in excess of that permitted under paragraph (1) of this subsection.

(3) The notice required by paragraph (2) of this subsection shall clearly set forth the new term or terms, the corresponding existing term or terms, and the effective date of the change; shall appear on a single document that contains no other information except the changed revolving credit account agreement or other material directly related to the change; and shall be in plain language. The notice shall clearly explain the two options available to the buyer. The options shall be presented more conspicuously than the rest of the notice by, for example, bold-faced type, larger type size, or contrasting color.

(d)(1) In addition to the credit service charge permitted in subsection (b) of this section, a seller or financial institution may impose a late fee, delinquency charge, or any similar assessment on each minimum payment not paid in full within 10 days after the date the minimum payment is due. The late fee, delinquency charge, or any similar assessment shall not exceed $15 for any one minimum payment not made within 10 days of the date the minimum payment was due.

(2) Notwithstanding the terms of any revolving credit account or any other provision of law, a seller or financial institution may impose a late fee, delinquency charge, or other similar assessment pursuant to paragraph (1) of this subsection provided that the seller or financial institution mails a written notice of the change to each affected buyer at least 30 days before the date of the effected change, and that the seller or financial institution shall permit each affected buyer to repay, under the existing terms, any debt incurred prior to the effective date of the change, unless the buyer incurs additional debt on or after that date or otherwise asserts in writing to the changes.

(3) The notice required by paragraph (2) of this subsection shall clearly set forth the new terms, the corresponding existing terms, and the effective date of the change; shall appear on a single document that contains no other information except the charged revolving account agreement or other material directly related to the change; and shall be in plain language. (Dec. 17, 1971, 85 Stat. 668, Pub. L. 92-200, § 4; 1973 Ed., § 28-3702; Mar. 10, 1982, D.C. Law 4-70, § 6, 28 DCR 5236; Mar. 14, 1984, D.C. Law 5-62, § 5, 31 DCR 114; July 14, 1995, D.C. Law 11-26, § 2, 42 DCR 2565; Apr. 18, 1996, D.C. Law 11-110, § 28 43 DCR 530.)

Effect of amendments. — D.C. Law 11-26 added (d).

D.C. Law 11-110 validated a previously made substitution of "changed" for "charged" in the first sentence in (c)(3).

Legislative history of Law 4-70. — See note to § 28-3701.

Legislative history of Law 5-62. — Law 5-62, the "Interest Rate Ceiling Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-193, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 15, 1983, and December 6, 1983, respectively. Signed by the Mayor on December 23, 1983, it was assigned Act No. 5-93 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-26. — Law 11-26, the "Revolving Credit account Late Fee

Act of 1995," was introduced in Council and assigned Bill No. 11-43, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 4, 1995 and May 2, 1995, respectively. Signed by the Mayor on May 15, 1995, it was assigned Act No. 11-54 and transmitted to both Houses of Congress for its review. D.C. Law 11-26 became effective on July 14, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Acts of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Application of Law 5-62. — See note to § 28-3310.

Commercial entity included. — There is no indication that this chapter was designed to reach consumption by a natural person while excluding purchases by a commercial entity. Giant Food, Inc. v. Jack I. Bender & Sons, App. D.C., 399 A.2d 1293 (1979).

CHAPTER 38. CONSUMER PROTECTIONS.

Sec.
28-3801. Scope — Limitation on agreements and practices.
28-3802. Definitions.
28-3803. Balloon payments.
28-3804. Assignment of earnings and authorization to confess judgment prohibited.
28-3805. Debts secured by cross-collateral.
28-3806. Attorney's fees.
28-3807. Negotiable instruments prohibited.
28-3808. Assignees subject to defenses.
28-3809. Lender subject to defenses arising from sales.
28-3810. Referral sales.
28-3811. Home solicitation sales.
28-3812. Limitation on creditors' remedies.
28-3813. Consumers' remedies.
28-3814. Debt collection.
28-3815. Administrative enforcement.
28-3816. Inconsistent laws: What law governs.
28-3817. Health spa sales.
28-3818. Layaway plans.
28-3819. Rental housing locators.

§ 28-3801. Scope — Limitation on agreements and practices.

This chapter applies to actions to enforce rights arising from a consumer credit sale or a direct installment loan. (Dec. 17, 1971, 85 Stat. 668, Pub. L. 92-200, § 4; 1973 Ed., § 28-3801.)

Cross references. — As to enforcement of unlawful trade practices by the Office of Consumer Protection, see § 28-3901 et seq.

As to Automobile Consumer Protection Act, see Chapter 13 of Title 40.

Applicability. — The Consumer Credit Protection Act applies to sales of motor vehicles in the District of Columbia. Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

Purpose of the revolving credit provisions of the Consumer Credit Protection Act was to establish maximum credit service charge rates for revolving credit accounts including credit cards growing out of retail sales in the District of Columbia. Giant Food, Inc. v. Jack I. Bender & Sons, App. D.C., 399 A.2d 1293 (1979).

Cited in Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Mileham & King, Inc. v. Fitzgerald, 110 WLR 637 (Super. Ct. 1982); Sterling Mirror of Md., Inc. v. Gordon, App. D.C., 619 A.2d 64 (1993).

§ 28-3802. Definitions.

As used in this chapter —

(1) "revolving credit account" means a revolving credit account as defined in section 28-3701 of this subtitle;

(2) "consumer credit sale" means a sale of goods or services in which —

(A) A credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(B) the buyer is a natural person;

(C) the goods or services are purchased primarily for a personal, family, household, or agricultural purpose;

(D) either the debt is payable in installments or a finance charge is made; and

(E) the amount financed does not exceed $25,000.

The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other

or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(3) "direct installment loan" means a direct installment loan as that term is used in section 28-3308 of this subtitle and does not include a loan secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this subtitle.

(4) "cross collateral" means an arrangement wherein a seller in a "consumer credit sale" secures a debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as a security for the previous debt. (Dec. 17, 1971, 85 Stat. 669, Pub. L. 92-200, § 4; 1973 Ed., § 28-3802.)

Neither a consumer credit sale nor a direct installment loan was involved where the basis of plaintiff's claim was a contract under the terms of which the defendant paid a deposit and agreed to pay the balance upon delivery and installation of merchandise. Sterling Mirror of Md., Inc. v. Gordon, App. D.C., 619 A.2d 64 (1993).

Cited in Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

§ 28-3803. Balloon payments.

With respect to a consumer credit sale or direct installment loans except for revolving credit accounts:

(1) No creditor shall at any time enter into an agreement which contains or anticipates a schedule of payments under which any one payment is not equal or substantially equal to all other payments, excluding any final payment which is less than the average of previous payments or any down payment received by the creditor contemporaneously with or prior to the consummation of the transaction, or under which the intervals between any consecutive payments differ substantially.

(2) Notwithstanding any provision of this section, where a consumer's livelihood is dependent upon seasonal or intermittent income, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments may be reduced or expanded in accordance with the needs of the consumer if such payments are expressly related to the consumer's income. The separate writing shall contain a conspicuous notice directly above the signature line stating: "I waive my right to have all payments to be made under this agreement in substantially equal amounts".

(3) In the event that the provisions of paragraph (2) of this section apply, the consumer shall have the right at any time, without further cost or obligation, to revise the schedule of payments to conform both as to amounts and intervals to the average of all installments and intervals. (Dec. 17, 1971, 85 Stat. 669, Pub. L. 92-200, § 4; 1973 Ed., § 28-3803.)

Section references. — This section is referred to in § 28-3909.

§ 28-3804. Assignment of earnings and authorization to confess judgment prohibited.

(a) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of an obligation arising out of a consumer credit sale or direct installment loan.

(b) A creditor may not take or accept from the consumer a warrant or power of attorney or other authorization for the creditor, or other person acting on his behalf, to confess judgment arising out of a consumer credit sale or direct installment loan.

(c) An assignment of earnings or an authorization in violation of this section is subject to the provisions of section 28-3813(d)(1) of this subtitle. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3804.)

§ 28-3805. Debts secured by cross-collateral.

(a) If debts arising from two or more consumer credit sales other than sales pursuant to a revolving charge account (section 28-3701), are secured by cross-collateral, or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(b) Payment received by the seller upon a revolving charge are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(c) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3805.)

Section references. — This section is referred to in § 28-3909.

§ 28-3806. Attorney's fees.

With respect to a consumer credit sale or direct installment loan the agreement may provide for the payment by the consumer of reasonable attorney's fees not in excess of 15% of the unpaid balance of the obligation. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3806.)

Cited in Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983); Singer v. Shannon & Luchs Co., 670 F. Supp. 1024 (D.D.C. 1987), cert. denied, 493 U.S. 822, 110 S. Ct. 81, 107 L. Ed. 2d 46 (1989).

§ 28-3807. Negotiable instruments prohibited.

(a) In a consumer credit sale, no seller shall take or otherwise arrange for the consumer to sign an instrument, except a check, payable "to order" or "to bearer" as evidence of the credit obligation of the consumer.

(b) Any holder of an instrument prohibited by subsection (a) of this section 28-3807, if he takes it with knowledge of a violation of this section, takes it subject to all claims and defenses of the consumer up to the amount owing on the transaction total at the time of the assignment. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3807.)

Section references. — This section is referred to in § 28-3909.

Applicability. — This section does not apply to Guaranteed Student Loans. Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

Cited in Jackson v. Culinary Sch. of Washington, Ltd., 59 F.3d 254 (D.C. Cir. 1995).

§ 28-3808. Assignees subject to defenses.

(a) With respect to a consumer credit sale, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer or lessee arising out of the sale notwithstanding any terms or agreements to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time of the assignment.

(b) Rights of the consumer or lessee can only be asserted as a matter of defense to or set-off against a claim by the assignee. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3808.)

Counterclaim unrestricted by this section. — This section is not applicable and did not limit scope of counterclaim because it was enacted after the commencement of the action. J.H. Marshall & Assocs. v. Burleson, App. D.C., 313 A.2d 587 (1973).

§ 28-3809. Lender subject to defenses arising from sales.

(a) A lender who makes a direct installment loan for the purpose of enabling a consumer to purchase goods or services is subject to all claims and defenses of the consumer against the seller arising out of the purchase of the goods or service if such lender acts at the express request of the seller, and —

(1) the seller participates in the preparation of the loan instruments, or

(2) the lender is a person or organization controlled by or under common control with the seller, or

(3) the seller receives or will receive a fee, compensation, or other consideration from the lender for arranging the loan.

(b) The lender's liability under this section may not exceed the amount of the loan. Rights of the debtor can only be asserted affirmatively in an action to cancel and void the sale from its inception, or as a matter of defense to or set-off against a claim by the lender. (Dec. 17, 1971, 85 Stat. 671, Pub. L. 92-200, § 4; 1973 Ed., § 28-3809.)

Applicability. — Because a Guaranteed Student Loan application is approved solely on a borrower's application, the prerequisite that the lender act at the request of the seller was not present, and therefore this section did not apply. Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

Cited in Jackson v. Culinary Sch., 788 F. Supp. 1233 (D.D.C. 1992); Jackson v. Culinary Sch. of Washington, Ltd., 59 F.3d 254 (D.C. Cir. 1995).

§ 28-3810. Referral sales.

With respect to a consumer credit sale, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the sellor or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. (Dec. 17, 1971, 85 Stat. 671, Pub. L. 92-200, § 4; 1973 Ed., § 28-3810.)

Section references. — This section is referred to in § 28-3909.

§ 28-3811. Home solicitation sales.

(a) As used in this section, "home solicitation sale" means a cash sale or a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at or near a residence of the buyer and the buyer's agreement or offer to purchase is there given to a seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving credit account or prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(b) Except as provided in subsection (f) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section.

(c) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(d) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and the postage prepaid.

(e) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(f) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(1) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(2) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(3) the buyer has signed separately the following notice which appears under the conspicuous caption: "WAIVER OF RIGHT TO CANCEL," and reads as follows: "Because of an emergency I waive any right I may have to cancel this home solicitation sale".

(g)(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with paragraph (2) of this subsection.

(2) The statement must—

(A) appear under this conspicuous caption: "BUYERS RIGHT TO CANCEL", and

(B) read as follows:

"If this agreement was solicited at or near your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you signed this agreement. The notice must be mailed to: _____

(insert name and address of seller)

If you cancel, the seller may not keep any of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(h)(1) Except as provided in this section, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. A provision permitting the seller to keep all or any part of any payment, note, or evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller

and has a lien on the goods in his possession or control for any recovery to which he is entitled.

(i)(1) Except as provided by the provisions on retention of goods by the buyer (subsection (h)(4) of this section), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation. (Dec. 17, 1971, 85 Stat. 671, Pub. L. 92-200, § 4; 1973 Ed., § 28-3811.)

Section references. — This section is referred to in § 28-3909.

Cancellation of sale precluded where buyer fails to comply with paragraph (i)(2). — The buyer is precluded from cancelling the sale if the buyer fails to exercise the degree of care required by paragraph (i)(2) of this section and remains liable for the contract price. Mileham & King, Inc. v. Fitzgerald, 110 WLR 637 (Super. Ct. 1982).

Effective cancellation. — Notice of cancellation mailed within 3 days of home solicitation sale and returned when company president refused to accept, which notice was in addition to oral communication of desire to cancel, was effective to exercise statutory right to cancel the agreement. Family Constr. v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 484 A.2d 250 (1984).

Cited in Etta v. Seaboard Enters., Inc., 674 F.2d 913 (D.C. Cir. 1982).

§ 28-3812. Limitation on creditors' remedies.

(a) This section applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28, District of Columbia Code); and, in addition, to extortionate extensions of credit.

(b)(1) During the thirty-day period after a default consisting of a failure to pay money the creditor may not because of the default (A) accelerate the unpaid balance of the obligation, (B) bring action against the debtor, or (C) proceed against the collateral.

(2) Unless the creditor has first (A) notified the debtor that he has elected to accelerate the unpaid balance of the obligation because of default, (B) brought action against the debtor, or (C) proceeded against the collateral, the debtor may cure a default consisting of a failure to pay money by tendering the amount of all unpaid sums due at the time of tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the debtor to his rights under the agreement as though the defaults cured had not occurred.

(3) Posting of any notice required by law shall be deemed valid if mailed by certified mail to the debtor's last known address.

(c)(1) The debtor may redeem the collateral from the creditor at any time —

(A) within fifteen days of the creditor's taking possession of the collateral, or

(B) thereafter until the creditor has either disposed of the collateral, entered into a contract for its disposition, or gained the right to retain the collateral in satisfaction of the debtor's obligation pursuant to the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(2) The debtor may redeem the collateral by tendering fulfillment of all obligations secured by the collateral including reasonable expenses incurred in realizing on the security interest.

(d) Subject to the provisions in this part, the parties may agree that the creditor has the right to take possession of the collateral on default. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace and with consent of the debtor. Those who take the collateral through repossession shall be deemed the agent of the creditor, and the creditor shall be civilly liable for any of the actions of its agents.

(e)(1) This subsection applies to consumer credit sales of goods or services and to direct installment loans served by interests in goods.

(2) A creditor may not maintain a proceeding for a deficiency unless he has disposed of the goods in good faith and in a commercially reasonable manner.

(3) If the creditor repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the consumer is not personally liable to the creditor for the unpaid balance of debt arising from the sale of a commercial unit of goods of which the cash price was $2,000 or less. In that case the creditor is not obligated to resell the collateral unless the consumer has paid 60% or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(4) If the creditor takes possession or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $2,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt arising from the sale and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(5) If the creditor takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a direct installment loan and the net proceeds of the loan paid to or for the benefit of the debtor are $2,000 or less, the consumer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(6) The consumer shall be liable in damages to the creditor if the debtor has wrongfully damaged the collateral or if, after default and demand, the debtor has wrongfully failed to make collateral available to the creditor.

(7) If the creditor elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment —

(A) he may not repossess the collateral, and

(B) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(f)(1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45% and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under paragraph (1) of this subsection.

(g)(1) With respect to a consumer credit sale, or direct installment loan, if the court as a matter of law finds —

(A) the agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(B) any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this section is not in and of itself unconscionable in the absence of other practices and circumstances. (Dec. 17, 1971, 85 Stat. 673, Pub. L. 92-200, § 4; 1973 Ed., § 28-3812.)

Section references. — This section is referred to in § 28-3909.

Cited in Randolph v. Franklin Inv. Co., App. D.C., 398 A.2d 340 (1979); Mileham & King, Inc. v. Fitzgerald, 110 WLR 637 (Super. Ct. 1982); Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

§ 28-3813. Consumers' remedies.

(a) The remedies provided by this section shall be liberally administered to the end that the consumer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with this chapter. Except as is otherwise specifically provided where there are wilful and repeated

violations of this chapter consequential and special damages may be had in lieu of the specific penalties allowed, and in addition punitive damages may be had as indicated.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(c) "Transaction total" means —

(1) in the case of transactions pursuant to open end credit plans or consumer credit transactions, the total of the following calculated as if the amount or amounts financed were paid over the maximum period of the plan or, if there is no such period, over twelve months beginning with the next billing cycle or cycles following the transaction or transactions:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the total finance charge, including any prepaid finance charge;

(2) in the case of other than open end transactions or consumer credit transactions, the total of the following:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the amount of all precomputed or precomputable finance charge, including any prepaid finance charge.

(d)(1) In the discretion of the court, a consumer may recover from the person violating this chapter, in addition to the damages the law otherwise allows, 10% of the transaction total, if applicable, or $100, whichever is greater, for violations to which this section applies.

(2) This section also applies to all violations for which no other remedy is specifically provided.

(e) If a consumer prevails in a suit brought under this chapter, the court may assess reasonable attorney's fees in addition to any other amounts recoverable under this chapter.

(f) Any charge, practice, term, clause, provision, security interest, or other action or conduct which can be shown to be in wilful violation of the provisions of this chapter shall confer no rights or obligations enforceable by action. (Dec. 17, 1971, 85 Stat. 675, Pub. L. 92-200, § 4; 1973 Ed., § 28-3813.)

Punitive damages improper. — Where undisputed facts do not warrant a finding that defendants knowingly and wilfully violated statutes appplicable to the sale of used cars and where it is not established that the prices contained an "exorbitant finance charge," a punitive damages award is not proper on summary judgment motion, under this chapter. Vines v. Hodges, 422 F. Supp. 1292 (D.D.C. 1976).

Cited in Hill v. Bonded Adjustment Ass'n, App. D.C., 398 A.2d 16 (1979); Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983); Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

§ 28-3814. Debt collection.

(a) This section only applies to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28).

(b) As used in this section, the term —

(1) "claim" means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;

(2) "debt collection" means any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and

(3) "debt collector" means any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims.

(c) No debt collectors shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any of the following ways:

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and

(5) the threat that nonpayment of an alleged claim will result in the arrest of any person.

(d) No debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; and

(3) causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

(e) No debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor in any of the following ways:

(1) the communication of any false information relating to a consumer's indebtedness to any employer or his agent except where such indebtedness had

been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of false information relating to a consumer's indebtedness to any relative or family member of the consumer unless such person is known to the debt collector to be a member of the same household as the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the debt collector.

(f) No debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers in any of the following ways:

(1) the use of any company name, while engaged in debt collection, other than the debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) any false representation that the debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding;

(6) any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or

any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

(g) No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known.

(h) No debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment for collection of any claim upon which suit has been filed or judgment obtained, without the debt collector first making a reasonable effort to contact the attorney representing the consumer.

(j)(1) Proof, by substantial evidence, that a debt collector has wilfully violated any provision of the foregoing subsections of this section shall subject such debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.

(2) Punitive damages may be awarded to any person affected by a wilful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact. (Dec. 17, 1971, 85 Stat. 675, Pub. L. 92-200, § 4; 1973 Ed., § 28-3814.)

Cross references. — As to dismissal of debt collection action pending consumer protection complaint, see § 28-3905.

Section references. — This section is referred to in § 28-3909.

Cited in Hill v. Bonded Adjustment Ass'n, App. D.C., 398 A.2d 16 (1979); Beard v. Goodyear Tire & Rubber Co., App. D.C., 587 A.2d 195 (1991).

§ 28-3815. Administrative enforcement.

(a) As used in this section —

(1) "Commissioner" ["Mayor"] means the Commissioner of the District of Columbia [Mayor of the District of Columbia] or his designated agent;

(b) Compliance with the requirements imposed under this chapter shall be enforced by the Commissioner [Mayor]. Nothing contained herein shall be construed to affect the authority and jurisdiction of the respective agencies designated in section 108 of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. 1601 et seq.).

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act [this chapter], or any rules or regulations issued under the authority of this act [this chapter], pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 27 of Title 6]. Adjudication of any infraction of this act [this chapter] shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 27 of Title 6]. (Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 4; 1973 Ed., § 28-3815; Mar. 8, 1991, D.C. Law 8-237, § 24, 38 DCR 314.)

Cross references. — As to enforcement by Department of Consumer and Regulatory Affairs, see § 28-3903.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 28-3816. Inconsistent laws: What law governs.

If any provision of law or regulation promulgated thereunder is inconsistent with this chapter, this chapter shall govern, unless this chapter or the inconsistent provision of the other laws specifically provides otherwise. (Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 4; 1973 Ed., § 28-3816.)

Cited in Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

§ 28-3817. Health spa sales.

(a) As used in this section, the term —

(1) "health spa" means a proposed or existing location or organization with indoor or outdoor facilities for physical sport, exercise, training, or therapy or rehabilitation. It does not include any location, the primary activity of which is training or instruction in a specific skill, such as dance, or swimming. It does not include any location which is operated primarily by a not-for-profit organization.

(2) "health spa sale" means a cash sale or a consumer credit sale in which a health spa or affiliated organization agrees, after the effective date of this section, to provide or make available, for a period of more than 30 days, goods or services (whether or not a membership is included) for physical sport, exercise, training, therapy or rehabilitation.

(3) "buyer" means any natural person who purchases a health spa sale contract for his, or another natural person's, personal use.

(4) "seller" means the seller of a health spa sale to a buyer.

(b) Every contract containing a health spa sale shall:

(1) be in writing;

(2) if renewable in whole or part, require the buyer's separate signature and payment for renewal;

(3) provide for a buyer's right (which may not be waived) to cancel, as explained in subsection (c);

(4) in close proximity to the space reserved for the buyer's signature, and in boldface type of at least ten points, include the following statement:

"NOTICE TO THE BUYER:

You have the right to cancel this contract during the first fifteen days after the contract is made, or after the first fifteen days, if, due to death, illness, injury, or a change in residence, you are unable to use the full membership privileges in this contract. If you cancel, you will have to pay only for the goods or services you are entitled to up through the month in which you cancel, plus a registration fee of 5% of the price of this contract (not counting any finance charge), not to exceed $25. You must notify the health spa, by certified or registered mail at the address given in this contract, of your intention to cancel, or your cancellation will not be effective. If your cancellation is due to illness or injury, a certificate from a doctor of your choice must accompany your notice of cancellation to the health spa. Contact the District of Columbia Office of Consumer Affairs if you have a question as to how to calculate your obligation or your refund after you cancel.";

(5) be presented, fully completed, to the buyer, and be signed and dated by the buyer, and then a copy, as so approved, be furnished to the buyer; and

(6) specify the seller's and the buyer's addresses.

(c)(1) The buyer, at his option, has the right to cancel a health spa sale during the first fifteen days after the sale is made, or after such fifteen days, if, due to death, illness, injury, or a change in residence, the buyer is unable to use all the goods and services provided in the sale.

(2) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the

intention of the buyer to be no longer bound by the health spa sale, and (whenever such notice is given more than 15 days after the contract is made) that, due to death, illness, injury, or a change in residence or in the location of the health spa, the buyer is unable to use all the goods or services promised in the sale. If the cancellation is due to illness or injury, a certificate from a doctor of the consumer's choice must accompany the notice of cancellation to the health spa.

(3) Cancellation occurs when the buyer mails written notice of cancellation to the seller at the seller's address as specified in the contract, by registered or certified mail.

(4) The cancellation balance shall be calculated as follows:

(A) Divide the number of months (counting a fraction as one month) which have elapsed from the date the contract (or renewal option then in effect) became effective to the date of cancellation, by the total number of months for which such services were contracted.

(B) Multiply the contract price (or the price for the renewal period then in effect) by the quotient obtained in subparagraph (A) of this paragraph.

(C) Add to the amount obtained in subparagraph (B) of this paragraph a registration fee of 5% of the original price of the contract (not counting any finance charge), but in no case more than $25.00.

(D) If the payment by the consumer of the contract price is financed, subtract from the amount obtained in subparagraph (c) of this paragraph the amount of interest, calculated by the method of 78ths, not yet accrued through the month of the contract during which cancellation occurs.

(E) Subtract the difference obtained in subparagraph (D) of this paragraph, or if not applicable, the amount obtained in subparagraph (C) of this paragraph, from the amount already paid by the buyer under the contract and finance agreement.

If this balance is a positive figure, it is the amount of the seller's refund to the buyer, and shall be due and payable within 15 days after the cancellation. If this balance is a negative figure, it is the amount of the buyer's obligation to the seller, and within 15 days after the cancellation, the seller shall notify the buyer of his obligation. Notice of such obligation, if given by mail, is given when it is deposited in a mail box postage prepaid and properly addressed to the buyer's address as stated in the notice of cancellation, or, if the buyer's address is not stated there, as stated in the contract.

(5) The buyer's right to cancel, as explained in this subsection, applies separately to all health spa sale contracts between the seller and the buyer.

(6) When there are two or more buyers (signatories, not necessarily beneficiaries, of the contract) of a health spa sale, the right to cancel, as explained in this subsection, is available only when all the buyers join in the notice of cancellation.

(7) After receiving notice of cancellation from the buyer, the seller shall mark his copy of the cancelled health spa sale contract "cancelled".

(d)(1) The seller shall maintain copies of all cancelled health spa sale contracts for a period of 2 years from their dates of cancellation, and such records shall be open to inspection by proper representatives of the District of Columbia Government.

(2) If a contract containing a health spa sale does not meet all the requirements of subsection (b) of this section, such health spa sale shall be void, and the buyer shall at any time be entitled to a complete refund of all payments made under that contract.

(3) Any person, company or organization which purchases a buyer's obligations under a health spa sale, makes such purchase subject to the buyer's right to cancel as explained in subsection (c) of this section, as if such person, company, organization were the seller.

(4) The principal consumer protection agency or the Corporation Counsel of the District of Columbia Government may seek in the proper court or administrative agency an order requiring a health spa to include in all health spa sale contracts the notice required in subsection (b)(4) of this section.

(e)(1) Each health spa which contracts health spa sales for goods or services to be provided or made available at a health spa which is planned, under construction, or in operation shall be required by the Department of Consumer and Regulatory Affairs ("Department") to maintain a bond, issued by a surety company licensed to do business in the District of Columbia, in an amount not less than $50,000, or shall file with the Department an irrevocable letter of credit or cash in that amount. A buyer of a health spa sale who suffers or sustains any loss or damage by reason of breach of contract or bankruptcy by the seller or by reason of a violation by the seller of the provisions of this act may bring an action based on the bond and recover against the surety. The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Department for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(2) A health spa which states in writing, at the time it registers with the Department pursuant to subsection (f) of this section, that it will make health spa sales to no more than 100 persons, shall for as long as it abides by the agreement be required to purchase a surety bond in the amount of $25,000 or to file with the Department an irrevocable letter of credit or cash in that amount.

(3) Each health spa, prior to making or contracting for any health spa sale, shall complete the registration required by subsection (f) of this section and shall file with the Department evidence that the bond or letter of credit is in force or shall file cash in lieu of the bond or letter of credit. Each health spa obtaining a bond or letter of credit shall file annually with the Department evidence that the bond or letter of credit remains in force, and shall maintain accurate records of the bond and premium payments on it, or of the letter of credit. These records shall be open to inspection by the Department at any time during normal business hours.

(f)(1) Each person or health spa which makes health spa sales in the District of Columbia shall register with the Department on forms provided by the Department. The person or health spa shall furnish the full name and address of each business location where health spa sales are contracted, a financial statement, and any other information the department deems appropriate.

(2) Each seller of health spa sales in the District of Columbia shall designate a resident of the District of Columbia to serve as resident agent for receipt of service of process.

(g) Any person or health spa which makes or contracts to make any health spa sale in violation of subsection (e)(3) of this section shall be subject to a fine of not less than $1,000 and not more than $5,000.

(h) The Department may bring an action to enjoin the sale of health spa memberships by any health spa which fails to comply with subsection (e)(3) of this section. (1973 Ed., § 28-3817; Apr. 15, 1976, D.C. Law 1-62, § 2(a), 22 DCR 6044; Mar. 13, 1985, D.C. Law 5-138, § 2, 31 DCR 5747.)

Cross references. — As to establishment of Department of Consumer and Regulatory Affairs as principal consumer protection agency, see § 28-3902.

Section references. — This section is referred to in § 28-3909.

Legislative history of Law 1-62. — Law 1-62, the "Health Spa Consumer Protection Act," was introduced in Council and assigned Bill No. 1-63, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 16, 1975 and January 13, 1976, respectively. Signed by the Mayor on February 10, 1976, it was assigned Act No. 1-92 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-138. — Law 5-138, the "Health Spa Consumer Protection Act Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-405, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 12, 1984, and October 9, 1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-196 and transmitted to both Houses of Congress for its review.

References in text. — "This act", referred to in the second sentence of paragraph (1) of subsection (e), is D.C. Law 5-138.

§ 28-3818. Layaway plans.

(a) *Definitions.* — As used in this section the term:

(1) "consumer goods" means chattels owned, used, or bought by an individual for personal, family, or household purposes. The term consumer goods does not include goods acquired for commercial or business use or resale;

(2) "layaway plan" means a plan or agreement whereby a seller of consumer goods offers for sale or sells such goods to a buyer on terms which contemplate completion of three (3) or more agreed payments all of which must be made prior to the release or delivery of such goods;

(3) "service charge" means a one time charge, not to exceed one dollar ($1.00) on any layaway plan, to cover the administrative costs associated with such layaway plan; provided, that the one dollar ($1.00) service charge shall cover all layaway plan transactions between the retailer and a single consumer occurring in the same business day.

(b) *Disclosures.* — The seller shall, prior to the time of executing a layaway plan agreement, provide the buyer with a copy of a written, clear, and conspicuous disclosure. Failure of the seller to comply with this provision shall be deemed an executed trade practice in violation of the law of the District of Columbia for which the penalties in section 6(i)(3) of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76) shall apply. The disclosure required by this subsection shall include:

(1) a statement as to the schedule or period of payments to be made by the buyer towards the purchase of consumer goods under a layaway plan;

(2) a statement that the consumer goods identified in the layaway plan will be retained in stock or set aside from stock but retained by the seller and made available for release or delivery to the buyer upon final payment or within fourteen (14) days after final payment;

(3) a statement as to the refund and exchange policies and charges restrictive of the seller pursuant to subsections (c), (d), (f), (g), and (h) of this section to the extent applicable;

(4) a statement as to the seller's right to deduct late charges as set forth in subsection (g) of this section; and

(5) a statement that the buyer shall receive from the seller a written statement, upon request, and shall obtain a receipt for any and all payments made towards the purchase of consumer goods under a layaway plan as set forth in subsections (i)(1) and (i)(2) of this section.

(c) *Buyer's right to cancel.* — The buyer, at his option, has the right to cancel an executed layaway plan within two (2) weeks after entering into the layaway plan and to obtain a full refund of any amount of money paid toward the purchase of consumer goods under the layaway plan. Such refund is payable upon cancellation or within two (2) weeks after cancellation.

(d) *Cancellation fee.* — If a buyer notifies a seller of his intention to cancel a purchase of consumer goods under a layaway plan after the expiration of the two (2) week cancellation period set forth in subsection (c) of this section, the seller shall promptly refund the full amount of money paid by the buyer towards the purchase of the consumer goods under the layaway plan. The seller may, however, retain an amount not to exceed eight percent (8%) of the purchase price of the consumer goods purchased under the layaway plan or sixteen dollars ($16.00), whichever is less.

(e) *Seller's default.* — If, for any reason, the seller is unable to provide the consumer goods identified in the layaway plan or their exact duplicate to the buyer upon final payment or within fourteen (14) days thereafter, the seller shall refund the entire amount paid by the buyer towards the purchase of such goods under the layaway plan plus eight percent (8%) of the purchase price of the consumer goods purchased under the layaway plan or sixteen dollars ($16.00), whichever is less.

(f) *Charges restricted.* — The seller shall not require a buyer who has executed a layaway plan to pay a charge or fee of any kind on such goods except for those fees pursuant to subsections (d), (g), and (j) of this section to the extent applicable.

(g) *Late fee.* — If, for any reason, the buyer is unable to make payment in accordance with the terms of a layaway plan, the seller shall send prompt notice informing the buyer of the delinquency in payment. If the seller does not receive payment on the consumer goods identified in the layaway plan within fourteen (14) days after such notice is sent to the buyer, the seller may deduct an amount not to exceed one dollar ($1.00) from the full amount of money paid by the buyer towards the purchase of such goods under the layaway plan and refund the remaining amount to the buyer.

(h) *Acceleration of payment prohibited.* — The seller shall not accelerate any payments under a layaway plan. The seller shall be entitled to the amount of payments due to date under the layaway plan including those charges pursuant to subsections (d) and (g) of this section to the extent applicable.

(i) *Receipt and statement of payments.* — (1) The seller shall promptly provide the buyer with a receipt for any and all payments made towards the purchase of consumer goods under a layaway plan. If payment is made by mail or by any means other than in person, a receipt shall be provided no later than seven (7) days after a payment is made. Such receipt shall include:

(A) a description of the consumer goods identified in the layaway plan; and

(B) the amount and date of such payment.

(2) The seller, upon request of the buyer, shall provide the buyer, within a reasonable time thereafter, a written statement of any and all payments made towards the purchase of consumer goods under the layaway plan. Such statement shall include:

(A) a description of the consumer goods identified in the layaway plan;

(B) the amount and date of any and all payments made to date;

(C) the total of all payments made to date; and

(D) the balance of all payments remaining.

(j) *Service charge.* — The seller is allowed to charge the buyer a service charge, which is not to exceed one dollar ($1.00), for goods purchased under a layaway plan, to cover the administrative costs associated with such layaway plan; provided, that the one dollar ($1.00) service charge shall cover all layaway plan transactions between the retailer and a single consumer occurring in the same business day. (1973 Ed., § 28-3818; Oct. 4, 1978, D.C. Law 2-115, § 2, 25 DCR 1997; Oct. 18, 1979, D.C. Law 3-28, § 2, 26 DCR 676.)

Section references. — This section is referred to in §§ 28-3903, 28-3904, and 28-3909.

Legislative history of Law 2-115. — Law 2-115, the "District of Columbia Consumer Lay Away Plan Act of 1978," was introduced in Council and assigned Bill No. 2-130, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 24, 1978, it was assigned Act No. 2-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-28. — Law 3-28, the "District of Columbia Consumer Lay Away Plan Service Charge Amendments Act of 1979," was introduced in Council and assigned Bill No. 3-117, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on August 1, 1979, it was assigned Act No. 3-77 and transmitted to both Houses of Congress for its review.

§ 28-3819. Rental housing locators.

(a) *Definitions.* — As used in this section the term or terms:

(1) "Fee" means any fee, commission, charge, deposit, down payment or other valuable consideration, including any fee or charge for a credit check or consultation.

(2) "Rental housing locator" or "locator" means any person who for a fee identifies or purports to identify or who provides or purports to provide any

other information about any rental unit available for rent, other than a rental unit owned or managed by such person.

(3) "Rental housing locator contract" means a contract between a rental housing locator and another person that obligates the locator for a fee to identify any number of rental units as available for rent or to provide any other information about them.

(4) "Rental unit" means any room, suite, apartment, or single family house rented or offered for rent as a residence, including any appurtenant services, facilities, improvements or land.

(b) *Registration.* — (1) Within thirty (30) days of the effective date of this section, each rental housing locator that provides listings for rental units located in the District of Columbia shall file with the Director of the Office of Consumer Protection a registration statement on a form approved by the Director. The registration statement shall include the business address of the rental housing locator agency, the name of all owners as well as any information the Director may require. The Director shall require a registration fee sufficient to recover the costs of administering this section.

(2) Each rental housing locator shall keep a duplicate of the registration statement posted in a conspicuous place in the business office of the rental housing locator.

(c) *Accuracy of information.* — (1) Every rental housing locator shall revise and correct all information to be provided pursuant to a rental housing locator contract or otherwise made available to any customer, potential customer, or the general public, every 24 hours for rental units it advertises and every 48 hours for rental units it does not advertise, or else remove such units from its lists and discontinue the advertising of such units.

(2) A rental housing locator shall identify as available for rent or provide other information about a rental unit only if the locator has been given permission to do so by the owner/manager of the unit, or the rental unit has been advertised, posted, or otherwise publicly offered or held out as available for rent, by the owner/manager of the rental unit.

(3) Rental housing locator agencies shall be required to make available, upon request, records of all unadvertised and advertised listings provided to customers and potential customers to the Office of Consumer Protection and the Metropolitan Police Department.

(d) *Contracts.* — (1) Contracts between the rental housing locator agency and the customer shall be written, and a copy of the contract shall be supplied to the customer.

(2) The contract shall clearly state the duration of the locator service contract.

(3) Every rental housing locator shall refund, upon request, any fee to any customer within thirty (30) days of said request if any of the rental housing information provided to that customer by the locator fails to comply with the requirements of accuracy as defined by subsection (c) of this section or if the locator fails, upon demand, to provide the correct street address or telephone number of any rental housing unit it advertises or otherwise describes to a customer; or if the locator fails to provide a customer with rental housing listings as called for in the contract.

(4) The contract shall include in a prominent place and in bold face type the following clauses:

(A) The first clause shall read as follows:

SAVE THIS DOCUMENT AND ANY RENTAL HOUSING LISTINGS PROVIDED TO YOU. WE ARE AN INFORMATION SERVICE ONLY. WE MAKE NO ATTEMPT TO SECURE YOU HOUSING. THE SERVICE OFFERS ONLY COMPILED INFORMATION CONCERNING AVAILABLE RENTAL HOUSING UNITS. NO GUARANTEE IS MADE THAT YOU WILL FIND RENTAL PROPERTY BY USING THIS SERVICE. YOU MAY BE ENTITLED TO A REFUND IF ANY OF THE RENTAL HOUSING INFORMATION PROVIDED TO YOU IS NOT CURRENT, ACCURATE OR OTHERWISE NOT IN COMPLIANCE WITH THE LAW; and

(B) The second clause shall state that all inquiries should be made to the District of Columbia Office of Consumer Protection followed by the current address, telephone number, and hours of that office. (June 21, 1980, D.C. Law 3-71, § 2, 27 DCR 1891.)

Section references. — This section is referred to in §§ 28-3904 and 28-3909.

Legislative history of Law 3-71. — Law 3-71, the "Rental Housing Locator Consumer Protection Act of 1979," was introduced in Council and assigned Bill No. 3-124, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by the Mayor on May 1, 1980, it was assigned Act No. 3-179 and transmitted to both Houses of Congress for its review.

Regulations authorized. — Section 4 of the Act of June 21, 1980, D.C. Law 3-71, provides: "The Mayor is authorized to issue regulations to effectuate the provisions of this act."

CHAPTER 39. CONSUMER PROTECTION PROCEDURES.

Sec.
28-3901. Definitions and purposes.
28-3902. Department of Consumer and Regulatory Affairs as consumer protection agency.
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28-3909. Restraining prohibited acts.

§ 28-3901. Definitions and purposes.

(a) As used in this chapter, the term —

(1) "person" means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized;

(2) "consumer" means a person who does or would purchase, lease (from), or receive consumer goods or services, including a co-obligor or surety, or a person who does or would provide the economic demand for a trade practice; as an adjective, "consumer" describes anything, without exception, which is primarily for personal, household, or family use;

(3) "merchant" means a person who does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who does or would supply the goods or services which are or would be the subject matter of a trade practice;

(4) "complainant" means one or more consumers who took part in a trade practice, or one or more persons acting on behalf of (not the legal representative or other counsel of) such consumers, or the successors or assigns of such consumers or persons, once such consumers or persons complain to the Department about the trade practice;

(5) "respondent" means one or more merchants alleged by a complainant to have taken part in or carried out a trade practice, or the successors or assigns of such merchants, and includes other persons who may be deemed legally responsible for the trade practice;

(6) "trade practice" means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services;

(7) "goods and services" means any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types;

(8) "Department" means the Department of Consumer and Regulatory Affairs;

(9) "Director" means the Director of the Department of Consumer and Regulatory Affairs;

(10) "Chief of the Office of Compliance" means the senior administrative officer of the Department's Office of Compliance who is delegated the responsibility of carrying out certain duties specified under section 28-3905;

(11) "Office of Adjudication" means the Department's Office of Adjudication which is responsible for carrying out certain duties specified under section 28-3905;

(12) "Office of Consumer Education and Information" means the Department's Office of Consumer Education and Information which is responsible for carrying out the statutory requirements set forth in section 28-3906; and

(13) "Committee" means the Advisory Committee on Consumer Protection which is responsible for carrying out the statutory requirements set forth in section 28-3907.

(b) The purposes of this chapter are to:

(1) assure that a just mechanism exists to remedy all improper trade practices;

(2) promote, through effective enforcement, fair business practices throughout the community; and

(3) educate consumers to demand high standards and seek proper redress of grievances. (1973 Ed., T. 28, Appx., § 2; July 22, 1976, D.C. Law 1-76, § 2, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 8, 1991, D.C. Law 8-234, § 2(b), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(b), 40 DCR 6311.)

Cross references. — As to requirements for operation of employment agencies, see § 36-1004.

As to requirements for operation of employment counseling services, see § 36-1005.

As to requirements for operation of employer-paid personnel services, see § 36-1006.

As to requirements for operation of job listing services, see § 36-1007.

As to Automobile Consumer Protection Act, see Chapter 13 of Title 40.

As to licenses for real estate brokers or real estate salespersons, see § 45-1926.

Effect of amendments. — D.C. Law 10-68 deleted "D.C. Code" prior to "§ 28-3906" in (a)(12).

Legislative history of Law 1-76. — Law 1-76, the "District of Columbia Consumer Protection Procedures Act," was introduced in Council and assigned Bill No. 1-253, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976 and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — Law 3-85, the "Enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980 and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-234. — See note to § 28-3909.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Delegation of authority pursuant to Law 1-76. — See Mayor's Order 86-132, August 12, 1986.

Design of chapter. — At least insofar as it is enforceable at the administrative level, this chapter was designed to police trade practices arising only out of consumer-merchant relationships. Howard v. Riggs Nat'l Bank, App. D.C., 432 A.2d 701 (1981).

Purpose. — The extensive administrative mechanism created by this chapter demonstrates a legislative objective to vest primary jurisdiction for resolving consumer disputes in the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) and to have consumer complaints resolved in the DCRA before a lawsuit filed by a merchant may proceed. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

Purpose. — This act is not designed to protect contractors but consumers, and the administrative remedies are for their benefit. Feinstone v. Potomac Group, Inc., 122 WLR 233 (Super. Ct. 1993).

Applicability. — The Consumer Protection Procedures Act applies to motor vehicle sales, and unlawful trade practices regarding such sales are prohibited. Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

Nothing in the D.C. Consumer Protection Procedures Act or interpretative case law indicates a legislative intent to give the act a broad extraterritorial effect, therefore, the act would not apply to a transaction by a District of Columbia resident with Virginia corporations where the fraudulent representations and actions took place in Virginia. Nelson v. Nationwide Mtg. Corp., 659 F. Supp 611 (D.D.C. 1987).

The Consumer Protection Procedures Act supplies consumers with a private cause of action against merchants. It is not intended to supply merchants with a private cause of action against other merchants. Independent Communications Network, Inc. v. MCI Telecommunications Corp., 657 F. Supp. 785 (D.D.C. 1987).

The type of injury which this chapter seeks to redress is not the provision of blood by nonprofit blood banks like the American Red Cross. Kozup v. Georgetown Univ., 663 F. Supp. 1048 (D.D.C. 1987), aff'd as modified, 851 F.2d 437 (D.C. Cir. 1988).

The definitional language and legislative history of the Consumer Protection Procedure Act indicate that it applies only to "unlawful trade practices" arising from a consumer-merchant relationship. Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989).

Nature of transaction. — It is not the use to which the purchaser ultimately puts the goods or services, but rather the nature of the purchaser that determines the nature of the transaction. Adam A. Weschler & Son v. Klank, App. D.C., 561 A.2d 1003 (1989).

Consumer. — Plaintiff, a member of a voluntary membership organization of independent taxicab owners and operators, was not a consumer within the meaning of this chapter in an action against such organization. Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988).

A limited partnership is not a consumer within the meaning of the Consumer Protection Procedures Act. Clifton Terrace Assocs. v. United Technologies Corp., 728 F. Supp. 24 (D.D.C. 1990), modified on other grounds, 929 F.2d 714 (1991).

Sale of real estate is not within the meaning of "primarily for personal, household or family use" of subsection (a)(2) of this section. Owens v. Curtis, App. D.C., 432 A.2d 737 (1981).

Scope of definition of "merchant." — While a "merchant" is not limited to the actual seller of the goods or services complained of, he must be a "person" connected with the "supply" side of a consumer transaction. Howard v. Riggs Nat'l Bank, App. D.C., 432 A.2d 701 (1981).

Narrower definition of merchant controls. — There is an obvious inconsistency between the definition of "merchant" in subsection (a)(3) of this section and the reference to "any person" in § 28-3904, but, applying the principle that the specific provision governs the general rule and reading the chapter as a whole, it must be concluded that the class of persons subject to suit under this chapter is necessarily restricted by the narrower definition of merchant. Howard v. Riggs Nat'l Bank, App. D.C., 432 A.2d 701 (1981).

Entities held not to be merchants. — A non-profit educational institution is not a merchant within the context of the Consumer Protection Procedures Act. Save Immaculata/Dunblane, Inc. v. Immaculata Preparatory Sch., Inc., App. D.C., 514 A.2d 1152 (1986).

Mere fact of fees charged or use of principles of sound business management does not render an organization a "merchant" under this section. Kozup v. Georgetown Univ., 663 F. Supp. 1048 (D.D.C. 1987), aff'd as modified, 851 F.2d 437 (D.C. Cir. 1988).

Plaintiff who supplied consumer credit to defendants could properly be considered a "merchant" under the terms of this section. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

Assignee of merchant included in term "merchant." — Section's use of the term "merchant" rather than "respondent" was not a conscious legislative decision to necessarily exclude merchants' assignees from the coverage of § 28-3905(k)(4). Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

The performance of legal services is a "trade practice" under this act. Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Rights of contractors. — A contractor has no right to initiate proceedings under this act and no standing to invoke this act on its own behalf. Feinstone v. Potomac Group, Inc., 122 WLR 233 (Super. Ct. 1993).

Cited in Lawson v. Nationwide Mtg. Corp., 628 F. Supp. 804 (D.D.C. 1986); Barlow v. McLeod, 666 F. Supp. 222 (D.D.C. 1986), aff'd, 861 F.2d 303 (D.C. Cir. 1988); Faison v. Nationwide Mtg. Corp., 832 F.2d 616 (D.C. Cir. 1987); Faison v. Nationwide Mtg. Corp., 839 F.2d 680 (D.C. Cir. 1987), cert. denied, 488 U.S. 823, 109 S. Ct. 70, 102 L. Ed. 2d 46 (1988); Kozup v. Georgetown Univ., 851 F.2d 437 (D.C. Cir. 1988), aff'd, 906 F.2d 783 (D.C. Cir. 1990); Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 566 A.2d 462 (1989); Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams, App. D.C.,

580 A.2d 583 (1990); Beard v. Goodyear Tire & Rubber Co., App. D.C., 587 A.2d 195 (1991).

§ 28-3902. Department of Consumer and Regulatory Affairs as consumer protection agency.

(a) The Department of Consumer and Regulatory Affairs shall be the principal consumer protection agency of the District of Columbia government and shall carry out the purposes of this chapter.

(b) Repealed.

(c) The Director of the Department of Consumer and Regulatory Affairs shall exercise the powers set forth in section 28-3905 through the Office of Compliance, and shall appoint a Chief of the Office of Compliance from among active members of the unified District of Columbia Bar. The Chief of the Office of Compliance may carry out investigative, conciliatory, and other duties assigned by the Director.

(d) Repealed.

(e) The Mayor shall appoint 1 or more attorneys qualified to serve as administrative law judges or attorney examiners to conduct adjudicatory proceedings. Any administrative law judge or attorney examiner appointed pursuant to this subsection may hear cases pursuant to section 103 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [§ 6-2703].

(f) Repealed.

(g) Repealed.

(h) Notwithstanding any other provision of District law, enforcement of this chapter by the Department of Consumer and Regulatory Affairs is suspended until October 1, 1998. (1973 Ed., T. 28, Appx., § 3; July 22, 1976, D.C. Law 1-76, § 3, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 5, 1981, D.C. Law 3-159, § 2(a), 27 DCR 5147; Oct. 5, 1985, D.C. Law 6-42, § 422, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-234, § 2(c), 38 DCR 296; Mar. 8, 1991, D.C. Law 8-237, § 4, 38 DCR 314; Feb. 5, 1994, D.C. Law 10-68, § 27(a), (c), 40 DCR 6311; Sept. 26, 1995, D.C. Law 11-52, § 812, 42 DCR 3684.)

Cross references. — As to furnishing of prescription drug price information posters to pharmacies, see § 33-712.

As to enforcement of prescription drug price information and substitution requirements, see § 33-743.

Effect of amendments. — D.C. Law 10-68 rewrote the section catchline.

D.C. Law 11-52 added (h).

Emergency act amendments. — For temporary amendment of section, see § 811 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 3-85. — See note to § 28-3901.

Legislative history of Law 3-159. — Law 3-159, the "Office of Consumer Protection Administrative Law Judge Act of 1980," was introduced in Council and assigned Bill No. 3-339, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-286 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June

25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-234. — See note to § 28-3909.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — See note to § 28-3901.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

References in text. — "Section 103 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985", referred to at the end of (e), is § 6-2703.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Cited in Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989).

§ 28-3903. Powers of the consumer protection agency.

(a) The Department may:

(1) receive and investigate complaints and initiate its own investigation of deceptive, unfair, or unlawful trade practices against consumers; issue summonses, hold hearings, compel the attendance of witnesses, administer oaths, and take the testimony of any person under oath, concerning any trade practice or practices;

(2) issue subpoenas to compel the production of documents, papers, books, records, and other evidence concerning any trade practice;

(3) issue cease and desist orders with respect to trade practices determined to be in violation of District law by the Department;

(4) report to appropriate governmental agencies any information concerning violation of any law;

(5) present the interest of consumers before administrative and regulatory agencies and legislative bodies;

(6) assist, advise, and cooperate with private, local and federal agencies and officials to protect and promote the interest of the District of Columbia consumer public;

(7) assist, develop, and conduct programs of consumer education and information through public hearings, meetings, publications, or other materials prepared for distribution to the consumer public of the District of Columbia;

(8) undertake activities to encourage local business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services and in the extension of credit;

(9) exercise and perform such other functions and duties consistent with the purposes or provisions of this chapter which may be deemed necessary or appropriate to protect and promote the welfare of District of Columbia consumers;

(10) publish rules and regulations governing the Department's procedures, developed by the Director in accordance with the District of Columbia Administrative Procedure Act (sections 1-1501 et seq.);

(11) implead and interplead persons who are properly parties to a case before the Department under section 28-3905;

(12) negotiate, agree to, and sign consent decrees;

(13) determine whether a person has executed a trade practice in violation of any law of the District of Columbia, and provide full remedy for such violation by:

(A) damages in contract, and orders for restitution, rescission, reformation, repair, and replacement,

(B) stipulations, conditions, and directives, both temporary and permanent, of all kinds,

(C) enforcement of orders and decrees, collection of civil penalties, and other activities, in the courts,

(D) and other lawful methods; and

(14) maintain both confidential and public records, and publicize its own actions, in accordance with section 28-3905.

(15) issue rules that interpret, define, state general policy, or prescribe requirements to prevent unfair, deceptive, and unlawful trade practices as set forth in section 28-3904.

(b) The Department shall:

(1) perform the functions of the Mayor, Department of Consumer Affairs, Board of Consumer Goods Repairs Services or Department of Economic Development in:

(A) the District of Columbia Consumer Credit Protection Act of 1971 (Title 28, Chapters 36, 37, 38, et. al.),

(B) the District of Columbia Consumer Retail Credit Regulation (16 DCMR Ch. 1),

(C) the District of Columbia Consumer Goods Repair Regulation (16 DCMR Ch. 6); and

(D) the District of Columbia Consumer LayAway Plan Act (section 28-3818);

(2) render annual reports to the Council and the Mayor as to the number of complaints filed and the nature, status, and disposition thereof, and about the other activities of the Department undertaken during the previous year.

(c) The Department may not:

(1) order damages for personal injury of a tortious nature;

(2) apply the provisions of section 28-3905 to:

(A) landlord-tenant relations;

(B) persons subject to regulation by the Public Service Commission of the District of Columbia;

(C) professional services of clergymen, lawyers, and Christian Science practitioners engaging in their respective professional endeavors;

(D) a television or radio broadcasting station or publisher or printer of a newspaper, magazine, or other form of printed advertising, which broadcasts, publishes, or prints an advertisement which violates District law, except

insofar as such station, publisher or printer engages in a trade practice which violates District law in selling or offering for sale its own goods or services, or has knowledge of the advertising being in violation of District law; or

(E) an action of an agency of government. (1973 Ed., T. 28, Appx., § 4; July 22, 1976, D.C. Law 1-76, § 4, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(a), 24 DCR 726; Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 8, 1991, D.C. Law 8-234, § 2(d), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(a), (d), 40 DCR 6311.)

Cross references. — As to enforcement and implementation of requirements, see § 28-4002.

As to furnishing of prescription drug price information posters to pharmacies, see § 33-712.

As to enforcement of prescription drug price information and substitution requirements, see § 33-743.

Section references. — This section is referred to in §§ 28-3905 and 28-4002.

Effect of amendments. — D.C. Law 10-68 rewrote the section catchline.

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 2-8. — Law 2-8, the "Consumer Goods Repair Board Act of 1977," was introduced in Council and assigned Bill No. 2-49, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 8, 1977 and March 22, 1977, respectively. Signed by the Mayor on April 7, 1977, it was assigned Act No. 2-28 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-115. — Law 2-115, the "District of Columbia Consumer Lay Away Plan Act of 1978," was introduced in Council and assigned Bill No. 2-130, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978 respectively. Signed by the Mayor on July 24, 1978, it was assigned Act No. 2-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — See note to § 28-3901.

Legislative history of Law 8-234. — See note to § 28-3909.

Legislative history of Law 10-68. — See note to § 28-3901.

Purpose of media exclusion in subsection (c)(2)(D). — See Howard v. Riggs Nat'l Bank, App. D.C., 432 A.2d 701 (1981).

Applicability. — There is no reason why the Consumer Protection Procedures Act should not apply to nonlawyers who purport to practice law. Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Authority. — The Consumer Protection Procedures Act does not expressly authorize an administrative law judge to grant attorney's fees or punitive damages in favor of a respondent-merchant. The only relief the Act empowers the administrative law judge to order on behalf of the innocent merchant is the dismissal of the case with prejudice. Ramos v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 601 A.2d 1069 (1992).

Administrative law tribunals, created by the legislature to serve dispute resolution and rulemaking-by-order functions within agencies of the executive branch, by definition and design do not have the inherent equitable authority that courts in the judicial branch have derived from common-law traditions and powers, and possess only narrowly defined statutory and regulatory powers. Ramos v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 601 A.2d 1069 (1992).

Cited in Baker v. District of Columbia, App. D.C., 494 A.2d 1299 (1985); Nelson v. Nationwide Mtg. Corp., 659 F. Supp. 611 (D.D.C. 1987); Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 566 A.2d 462 (1989); Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989).

§ 28-3904. Unlawful trade practices.

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

(b) represent that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have;

(c) represent that goods are original or new if in fact they are deteriorated, altered, reconditioned, reclaimed, or second hand, or have been used;

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(f) fail to state a material fact if such failure tends to mislead;

(g) disparage the goods, services, or business of another by false or misleading representations of material facts;

(h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered;

(i) advertise or offer goods or services without supplying reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition which has no tendency to mislead;

(j) make false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or the price in comparison to price of competitors or one's own price at a past or future time;

(k) falsely state that services, replacements, or repairs are needed;

(l) falsely state the reasons for offering or supplying goods or services at sale or discount prices;

(m) harass, or threaten a consumer with any act other than legal process, either by telephone, cards, or letters;

(n) cease work on, or return after ceasing work on, an electrical or mechanical apparatus, appliance, chattel or other goods, or merchandise, in other than the condition contracted for, or to impose a separate charge to reassemble or restore such an object to such a condition without notification of such charge prior to beginning work on or receiving such object;

(o) replace parts or components in an electrical or mechanical apparatus, appliance, chattel or other goods, or merchandise when such parts or components are not defective, unless requested by the consumer;

(p) falsely state or represent that repairs, alterations, modifications, or servicing have been made and receiving remuneration therefor when they have not been made;

(q) fail to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement, or other evidence of indebtedness which the consumer may execute;

(r) make or enforce unconscionable terms or provisions of sales or leases; in applying this subsection, consideration shall be given to the following, and other factors:

(1) knowledge by the person at the time credit sales are consummated that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) knowledge by the person at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;

(3) gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in transactions by like buyers or lessees;

(4) that the person contracted for or received separate charges for insurance with respect to credit sales with the effect of making the sales, considered as a whole, unconscionable; and

(5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors;

(s) pass off goods or services as those of another;

(t) use deceptive representations or designations of geographic origin in connection with goods or services;

(u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not;

(v) misrepresent the authority of a salesman, representative or agent to negotiate the final terms of a transaction;

(w) offer for sale or distribute any consumer product which is not in conformity with an applicable consumer product safety standard or has been ruled a banned hazardous product under the federal Consumer Product Safety Act (15 U.S.C. §§ 2051-83), without holding a certificate issued in accordance with section 14(a) of that Act to the effect that such consumer product conforms to all applicable consumer product safety rules (unless the certificate holder knows that such consumer product does not conform), or without relying in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to a consumer product safety rule issued under that Act;

(x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Code, or by operation or requirement of federal law;

(y) violate any provision of the District of Columbia Consumer LayAway Plan Act (section 28-3818);

(z) violate any provision of the Rental Housing Locator Consumer Protection Act of 1979 (section 28-3819) or, if a rental housing locator, to refuse or fail to honor any obligation under a rental housing locator contract;

(z-1) violate any provision of Chapter 46 of this title;

(aa) violate any provision of sections 36-1004, 36-1005, 36-1006, and 36-1007;

(bb) refuse to provide the repairs, refunds, or replacement motor vehicles or fails to provide the disclosures of defects or damages required by the Automobile Consumer Protection Act of 1984;

(cc) violate any provision of the Real Property Credit Line Deed of Trust Act of 1987; or

(dd) violate any provision of title 16 of the District of Columbia Municipal Regulations. (1973 Ed., T. 28, Appx., § 5; July 22, 1976, D.C. Law 1-76, § 5, 23 DCR 1185; Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997; June 21, 1980, D.C.

Law 3-71, § 3(a), 27 DCR 1891; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 13, 1985, D.C. Law 5-136, § 16, 31 DCR 5727; Mar. 14, 1985, D.C. Law 5-162, § 9(a), 32 DCR 160; Jan. 28, 1988, D.C. Law 7-67, § 5, 34 DCR 7441; Mar. 8, 1991, D.C. Law 8-234, § 2(e), 38 DCR 296; Mar. 8, 1991, D.C. Law 8-236, § 9, 38 DCR 306; Feb. 5, 1994, D.C. Law 10-68, § 27(e), 40 DCR 6311; July 25, 1995, D.C. Law 11-30, § 7(h), 42 DCR 1547.)

Cross references. — As to penalties for violations of Employment Services Licensing and Regulation Act, see § 36-1014.

As to application of and limitation of actions under D.C. Law 5-162 the Automobile Consumer Protection Act of 1984, see § 40-1307.

As to rules and regulations implementing Automobile Consumer Protection Act, see § 40-1308.

Section references. — This section is referred to in §§ 28-3903, 28-3905, 28-3909, 28-4006, and 31-1612.

Effect of amendments. — D.C. Law 10-68 substituted "refuse" for "refuses" in (bb).

D.C. Law 11-30 substituted "Chapter 46 of this title" for "the District of Columbia Consumer Credit Service Organizations Act of 1990" in (z-1).

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 2-115. — See note to § 28-3903.

Legislative history of Law 3-71. — Law 3-71, the "Rental Housing Locator Consumer Protection Act of 1979," was introduced in Council and assigned Bill No. 3-124, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by the Mayor on May 1, 1980, it was assigned Act No. 3-179 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — See note to § 28-3901.

Legislative history of Law 5-136. — Law 5-136, the "Employment Services Licensing and Regulation Act of 1984," was introduced in Council and assigned Bill No. 5-280, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 12, 1984, and October 9, 1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-162. — Law 5-162, the "Automobile Consumer Protection Act of 1984," was introduced in Council and assigned Bill No. 5-288, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-67. — Law 7-67, the "Real Property Credit Line Deed of Trust Act of 1987," was introduced in Council and assigned Bill No. 7-163, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 13, 1987, and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-100 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-51. — Law 8-51, the "Natural Disaster Consumer Protection Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-330. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-85 and transmitted to both Houses of Congress for its review. D.C. Law 8-51 became effective on October 19, 1989.

Legislative history of Law 8-234. — See note to § 28-3909.

Legislative history of Law 8-236. — Law 8-236, the "District of Columbia Consumer Credit Service Organization Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-70, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-319 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — See note to § 28-3901.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

References in text. — The "Automobile Consumer Protection Act of 1984", referred to

in paragraph (bb) of this section, is D.C. Law 5-162, codified as Chapter 13 of Title 40.

The "Real Property Credit Line Deed of Trust Act of 1987," referred to in subsection (cc) of this section, is codified as Chapter 29 of Title 45.

"The District of Columbia Consumer Credit Service Organization [Amendment] Act of 1990", referred to in (z-1), is D.C. Law 8-236.

Consumer Credit Service Organizations. — See §§ 28-4601 through 28-4608.

Applicability. — The Consumer Protection Procedures Act applies to motor vehicle sales, and unlawful trade practices regarding such sales are prohibited by this section. Franklin Inv. Co. v. King, 114 WLR 1993 (Super. Ct. 1986).

The activities of an accrediting agency were not covered by the Consumer Protection Procedures Act. Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

This section does not apply to Guaranteed Student Loan contracts, which are used for "services," not "goods" (as required by subsection (x) of this section). Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

Finding that nonattorney misrepresented himself as an advocate with skills equivalent to those of a lawyer supported agency's conclusion that he had violated subsections (a), (b) and (d). Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Extraterritorial effect. — Nothing in the D.C. Consumer Protection Procedures Act or interpretative case law indicates a legislative intent to give the act a broad extraterritorial effect, therefore, the act would not apply to a transaction by a District of Columbia resident with Virginia corporations where the fraudulent representations and actions took place in Virginia. Nelson v. Nationwide Mtg. Corp., 659 F. Supp. 611 (D.D.C. 1987).

Narrower definition of merchant controls. — There is an obvious inconsistency between the definition of "merchant" in § 28-3901(a)(3) and the reference to "any person" in this section, but, applying the principle that the specific provision governs the general and reading the chapter as a whole, it must be concluded that the class of persons subject to suit under this chapter is necessarily restricted by the narrower definition of merchant. Howard v. Riggs Nat'l Bank, App. D.C., 432 A.2d 701 (1981).

List of unlawful trade practices not exclusive. — Although this section makes a host of consumer trade practices unlawful, its list of such practices is not exclusive, and the remainder of the section contemplates that procedures and sanctions provided by the Consumer Protection Procedures Act will be used to enforce trade practices made unlawful by other statutes. Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 566 A.2d 462 (1989).

The "unlawful trade practices" enumerated in this section do not include violations of § 35-2109. Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 566 A.2d 462 (1989).

Aider-and-abettor liability. — No provision of the Consumer Protection Procedures Act creates a cause of action for aider-and-abettor liability; in the absence of such a provision, it is assumed that the Council intended to make liable only those who actually violate the CPPA. Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 832 F. Supp. 419 (D.D.C. 1993).

Jurisdiction. — The United States District Court has jurisdiction to hear action alleging violations of this section despite the fact that § 28-3905(k)(1) provides for a cause of action to be brought in the Superior Court of the District of Columbia. Independent Communications Network, Inc. v. MCI Telecommunications Corp., 657 F. Supp. 785 (D.D.C. 1987).

Judgment n.o.v. — Where plaintiff's pretrial statement referred to the Consumer Protection Procedures Act only in her request for treble damages pursuant to § 28-3905(k)(1), and where her request that the court judicially notice numerous statutes and regulations, among which was "D.C. Code §§ 28-3900, et seq.," never made specific reference in the pleadings or in the pretrial statement to subsections (n) and (x) of this section, the statutory provisions on which the jury's verdict was allegedly based, the trial court did not err in granting defendant's motion for judgment n.o.v. Adams v. A.B. & A., Inc., App. D.C., 613 A.2d 858 (1992).

Knowledge of consumer. — Even if client understood that nonlawyer was not a licensed lawyer, where agency found—and the record supported the finding—that nonlawyer misrepresented his status as being equivalent to a lawyer for the kind of problem client presented, party violated subsections (a), (b) and (d). Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Lack of "tendency to mislead." — There was no subsection (e) violation where nonlawyer accepted $800 "as partial payment for services he did not render" because there was no discernible "tendency to mislead" since client himself had declared that no services were to be performed. Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C.,

634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Cited in Baker v. District of Columbia, App. D.C., 494 A.2d 1299 (1985); Lawson v. Nationwide Mtg. Corp., 628 F. Supp. 804 (D.D.C. 1986); Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986); Perkins v. Nash, 697 F. Supp. 527 (D.D.C. 1988); Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988); Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988); Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989); Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams, App. D.C., 580 A.2d 583 (1990); Martin v. Coca-Cola Co., 785 F. Supp. 3 (D.D.C. 1992); Jackson v. Culinary Sch., 788 F. Supp. 1233 (D.D.C. 1992); Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994); Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994); Rhee Bros. v. Seoul Shik Poom, Inc., 869 F. Supp. 31 (D.D.C. 1994); Jackson v. Culinary Sch. of Washington, Ltd., 59 F.3d 254 (D.C. Cir. 1995).

§ 28-3905. Complaint procedures.

(a) A case is begun by filing with the Department a complaint plainly describing a trade practice and stating the complainant's (and, if different, the consumer's) name and address, the name and address (if known) of the respondent, and such other information as the Director may require. The complaint must be in or reduced by the Director to writing. The filing of a complaint with the Department shall toll the periods for limitation of time for bringing an action as set out in section 12-301 until the complaint has been resolved through an administrative order, consent decree, or dismissal in accordance with this section or until an opportunity to arbitrate has been provided in Chapter 13 of Title 40.

(b) The Director shall investigate each such complaint and determine:

(1) what trade practice actually occurred, and

(2) whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law, of the District of Columbia;

(b-1) In carrying out an investigation and determination pursuant to subsection (b) of this section, the Director shall consult the respondent and such other available sources of information, and make such other efforts, as are appropriate and necessary to carry out such duties.

(c) If at any time the Director finds that the trade practice complained of may, in whole or in part, be a violation of law other than a law of the District of Columbia or a law within the jurisdiction of the Department, the Director may in writing so inform the complainant, respondent and officials of the District, the United States, or other jurisdiction, who would properly enforce such law.

(d) Within 60 days after the complaint is filed, the Director shall, absent good cause for delay as determined by the Office of Adjudication, determine that there are, or that there are not, reasonable grounds to believe that a trade practice, in violation of a law of the District of Columbia within the jurisdiction of the Department, has occurred in any part or all of the case. The Director may find that there are not such reasonable grounds for any of the following reasons:

(1) any violation of law which may have occurred is of a law not of the District of Columbia or not within the jurisdiction of the Department, or occurred more than three years prior to the filing of the complaint;

(2) in case paragraph (1) of this subsection does not apply, no trade practice occurred in violation of any law of the District;

(3) the respondent cannot be identified or located, or would not be subject to the personal jurisdiction of a District of Columbia court;

(4) the complainant, to the Director's knowledge, no longer seeks redress in the case;

(5) the complainant and respondent, to the Director's knowledge, have themselves reached an agreement which settles the case; or

(6) the complainant can no longer be located.

(d-1) The Director may dismiss any part or all of a case to which one or more of the reasons stated in subsection (d) of this section apply. The Director shall inform all parties in writing of the determination, and, if any part or all of the case is dismissed, shall specify which of the reasons in this subsection applies to which part of the case, and such other detail as is necessary to explain the dismissal.

(e) The Director shall attempt to settle, in accordance with subsection (h) of this section, each case for which reasonable grounds are found in accordance with subsection (d-1) of this section. Within 180 days of the Director's determination as to whether the complaint is within the Department's jurisdiction, in accordance with subsection (d-1) of this section, the Director shall, absent good cause for delay as determined by the Office of Adjudication:

(1) effect a consent decree;

(2) dismiss the case in accordance with subsection (h)(2) of this section;

(3) through the Chief of the Office of Compliance present to the Office of Adjudication, with copies to all parties, a brief and plain statement of each trade practice that occurred in violation of District law, the law the trade practice violates, and the relief sought from the Office of Adjudication for violation; or

(4) notify all parties of another action taken, with the reasons therefor stated in detail and supported by fact. Reasons may include:

(A) any reason listed in subsections (d)(1) through (d)(6) of this section; and

(B) that the presentation of a charge to the Office of Adjudication would not serve the purposes of this chapter.

(5) Repealed.

(f) When the case is transmitted to the Office of Adjudication, the Chief of the Office of Compliance shall sign, and serve the respondent, the Department's summons to answer or appear before the Office of Adjudication. Not less than 15 nor more than 90 days after such transmittal, the case shall be heard. The case shall proceed under section 10 of the District of Columbia Administrative Procedure Act (section 1-1509). The Office of Adjudication may, without delaying its hearing or decision, attempt to settle the case pursuant to subsection (h) of this section, and has discretion to permit any stipulation or consent decree the parties agree to. The Director shall be a party on behalf of the complainant. Applications to intervene shall be decided as may be proper or required by law or rule. Reasonable discovery shall be freely allowed. Any finding or decision may be modified or set aside, in whole or part, before a notice of appeal is filed in the case, or the time to so file has run out.

(g) If, after hearing the evidence, the Office of Adjudication decides a trade practice occurred in which the respondent violated a law of the District of Columbia within the jurisdiction of the Department, such Office of Adjudication shall issue an order which:

(1) shall require the respondent to cease and desist from such conduct;

(2) shall, if such Office of Adjudication also decides that the consumer has been injured by the trade practice, order redress through contract damages, restitution for money, time, property or other value received from the consumer by the respondent, or through rescission, reformation, repair, replacement, or other just method;

(3) shall state the number of trade practices the respondent performed in violation of law;

(4) shall, absent good cause found by the Office of Adjudication, require the respondent to pay the Department its costs for investigation, negotiation, and hearing;

(5) may include such other findings, stipulations, conditions, directives, and remedies including punitive damages, treble damages, or reasonable attorney's fees, as are reasonable and necessary to identify, correct, or prevent the conduct which violated District law; and

(6) may be based, in whole or part, upon a violation of a law establishing or regulating a type of business, occupational or professional license or permit, and may refer the case for further proceedings to an appropriate board or commission, but may not suspend or revoke a license or permit if there is a board or commission which oversees the specific type of license or permit.

(h)(1) At any time after reasonable grounds are found in accordance with subsection (d) of this section, the respondent, the Department (represented by (i) the Director prior to transmittal to the Office of Adjudication and after an order issued pursuant to subsection (f) of this section has been appealed, and (ii) the Office of Adjudication after transmittal to the Office of Adjudication and prior to such appeal), and the complainant, may agree to settle all or part of the case by a written consent decree which may:

(A) include any provision described in subsection (g)(2) through (6) of this section;

(B) not contain an assertion that the respondent has violated a law;

(C) contain an assurance that the respondent will refrain from a trade practice;

(D) bar the Department from further action in the case, or a part thereof; or

(E) contain such other provisions or considerations as the parties agree to.

(2) The representative of the Department shall administer the settlement proceedings, and may utilize the good offices of the Advisory Committee on Consumer Protection. All settlement proceedings shall be informal and include all interested parties and such representatives as the parties may choose to represent them. Such proceedings shall be private, and nothing said or done, except a consent decree, shall be made public by the Department, any party, or the Advisory Committee, unless the parties agree thereto in writing. The

representative of the Department may call settlement conferences. For persistent and unreasonable failure by the complainant to attend such conferences or to take part in other settlement proceedings, the Director, prior to transmittal to the Office of Adjudication, may dismiss the case.

(3) A consent decree described in paragraph (1) of this subsection may be modified by agreement of the Department, complainant and respondent.

(i)(1) An aggrieved party may appeal to the District of Columbia Court of Appeals after:

(A) the Office of Adjudication decides a case pursuant to subsection (f) of this section;

(B) all parts of a case have been dismissed by operation of subsections (d) or (e) of this section;

(C) the Director dismisses an entire case in accordance with subsection (h)(2) of this section.

Such appeals shall be conducted in accordance with the procedures and standards of section 11 of the District of Columbia Administrative Procedure Act (section 1-1510), and take into account the procedural duties placed upon the Department in this section and all actions taken by the Department in the case.

(2) An aggrieved party may appeal any ruling of the Office of Adjudication under subsection (j) of this section to the Superior Court of the District of Columbia.

(3)(A) Any person found to have executed a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department:

(i) shall be liable to the Department for a civil penalty of not exceeding $1000.00 for each violation enumerated in an order pursuant to subsection (g)(3) of this section;

(ii) may be assessed and made liable to the Department for a civil penalty of not exceeding $1000.00 for each violation or failure to adhere to a provision, of an order described in subsections (f), (g), or (j) of this section or a consent decree described in subsection (h) of this section.

(B) The Department, the complainant, or the respondent may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty, when any violation, or failure to adhere to a provision of a consent decree described in subsection (h) of this section, or an order described in subsections (f), (g), or (j) of this section, has occurred. The Department shall sue in that Court for assessment of a civil penalty when an order described in subsection (g) of this section has been issued and become final. A failure by the Department or any person to file suit or prosecute under this subparagraph in regard to any provision or violation of a provision of any consent decree or order, shall not constitute a waiver of such provision or any right under such provision. The Court shall levy the appropriate civil penalties, and may order, if supported by evidence, temporary, preliminary, or permanent injunctions, damages, treble damages, reasonable attorney's fees, consumer redress, or other remedy. The Court may set aside the final order if the Court determines that the Department of Consumer and Regulatory Affairs lacked jurisdiction over the respondent or that the

complaint was frivolous. If, after considering an application to set aside an order of the Department of Consumer and Regulatory Affairs, the Court determines that the application was frivolous or that the Department of Consumer and Regulatory Affairs lacked jurisdiction, the Court shall award reasonable attorney's fees.

(C) Application to the Court to enforce an order shall be made at no cost to the District of Columbia or the complainant.

(4) The Corporation Counsel shall represent the Department in all proceedings described in this subsection.

(j) If, at any time before notice of appeal from a decision made according to subsection (f) of this section is filed or the time to so file has run out, the Director believes that legal action is necessary to preserve the subject matter of the case, to prevent further injury to any party, or to enable the Department ultimately to order a full and fair remedy in the case, the Chief of the Office of Compliance shall present the matter to the Office of Adjudication, which may issue a cease and desist order to take effect immediately, or grant such other relief as will assure a just adjudication of the case, in accordance with such beliefs of the Director which are substantiated by evidence. The Office of Adjudication's ruling may be appealed to court within 7 days of notice thereof on the Director, respondent, and complainant.

(k)(1) Any consumer who suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

(A) treble damages;

(B) reasonable attorneys' fees;

(C) punitive damages;

(D) any other relief which the court deems proper.

(2) Nothing in this chapter shall prevent any person who is injured by a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department from exercising any right or seeking any remedy to which the person might be entitled or from filing any complaint with any other agency.

(3) Any written decision made pursuant to subsection (f) of this section is admissible as prima facie evidence of the facts stated therein.

(4) If a merchant files in any court a suit seeking to collect a debt arising out of a trade practice from which has also arisen a complaint filed with the Department by the defendant in the suit either before or after the suit was filed, the court shall dismiss the suit without prejudice, or remand it to the Department.

(l) The Director and Office of Adjudication may use any power granted to the Department in section 28-3903, as each reasonably deems will aid in carrying out the functions assigned to each in this section. Each, while holding the primary responsibility of the Department for decision in a certain case, may join such case with others then before the Department. No case may be disposed of in a manner not expressly authorized in this section. Every

complaint case filed with the Department and within its jurisdiction shall be decided in accordance with the procedures and sanctions of this section, notwithstanding that a given trade practice, at issue in the case, may be governed in whole or in part by another law which has different enforcement procedures and sanctions.

(m)(1) Whenever requested, the Department will make available to the complainant and respondent an explanation, and any other information helpful in understanding, the provisions of any consent decree to which the Department agrees, and any order or decision which the Department makes.

(2) The Director shall maintain a public index for all the cases on which the Department has made a final action or a consent decree, organized by:

(A) name of complainant;

(B) name of respondent;

(C) industry of the merchant involved;

(D) nature of the violation of District law alleged or found to exist (for example, subsection of section 28-3904 involved, or section of a licensing law involved);

(E) final disposition.

(n) All of the moneys paid to the Department by operation of this section shall be paid to the General Fund of the District.

(o) Every complaint case that is before the Department in accordance with this section shall proceed in confidence, except for hearings and meetings before the Office of Adjudication, until the Department makes a final action or a consent decree.

(p) The Director may file a complaint in accordance with subsection (a) of this section, on behalf of one or more consumers or as complainant, based on evidence and information gathered by the Department in carrying out this chapter. Persons not parties to but directly or indirectly intended as beneficiaries of an order described in subsections (f), (g), or (j) of this section, or a consent decree described in subsection (h) of this section, arising out of a complaint filed by the Director, may enforce such order or decree in the manner provided in subsection (i)(3)(B) of this section.

(q) At any hearing pursuant to subsections (f) or (j) of this section, a witness has the right to be advised by counsel present at such hearing. In any process under this section, the complainant and respondent may have legal or other counsel for representation and advice.

(r) All cases for which complaints were filed before March 5, 1981, may be presented to and heard by the Office of Adjudication notwithstanding the time limits previously provided in section 28-3905(d), 28-3905(e), and 28-3905(f) for the investigation and transmittal of cases to the Office of Adjudication, and for the hearing of cases by the Office of Adjudication. (1973 Ed., T. 28, Appx., § 6; July 22, 1976, D.C. Law 1-76, § 6, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(b), 24 DCR 726; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 5, 1981, D.C. Law 3-159, §§ 2(b), (c), 3, 27 DCR 5147; Mar. 8, 1991, D.C. Law 8-234, § 2(f), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(f), 40 DCR 6311.)

Cross references. — As to applicability to hearing aid sales, see § 28-4002.

Section references. — This section is referred to in §§ 28-3901, 28-3902, 28-3903, 28-3906, and 28-4002.

Effect of amendments. — D.C. Law 10-68 inserted "an" preceding "opportunity" in the third sentence of (a), and added "of this section" to the end of (h)(1)(A).

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 2-8. — See note to § 28-3903.

Legislative history of Law 3-85. — See note to § 28-3901.

Legislative history of Law 3-159. — See note to § 28-3902.

Legislative history of Law 8-234. — See note to § 28-3909.

Legislative history of Law 10-68. — See note to § 28-3901.

Purpose. — This act is not designed to protect contractors but consumers, and the administrative remedies are for their benefit. Feinstone v. Potomac Group, Inc., 122 WLR 233 (Super. Ct. 1993).

Applicability of chapter. — The legislative history indicates unequivocally that subsection (k)(2) of this section was intended to refer to consumer-plaintiffs only; moreover, other sections of the Consumer Protection Procedures Act, such as § 28-3901, indicate that the act was meant to embrace consumer-merchant interactions exclusively. Independent Communications Network, Inc. v. MCI Telecommunications Corp., 657 F. Supp. 785 (D.D.C. 1987).

Power to grant administrative relief. — The Consumer Protection Procedures Act does not expressly authorize an administrative law judge to grant attorney's fees or punitive damages in favor of a respondent-merchant. The only relief the Act empowers the administrative law judge to order on behalf of the innocent merchant is the dismissal of the case with prejudice. Ramos v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 601 A.2d 1069 (1992).

A respondent-merchant, consumer-complainant or the Department of Consumer and Regulatory Affairs, may bring a cause of action in the Superior Court for a remedy, enforcement, assessment or collection of a civil penalty for violation of a consent decree, or an administrative order with attorney's fees and extra damages for respondent-merchants expressly authorized, only in connection with a Superior Court adjudication, not as part of an administrative adjudication. Ramos v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 601 A.2d 1069 (1992).

Condition precedent. — Suffering damage is a condition precedent to suit, and one who has not been injured cannot sue under this section for any relief whatever. Beard v. Goodyear Tire & Rubber Co., App. D.C., 587 A.2d 195 (1991).

Standing. — A contractor has no right to initiate proceedings under this act and no standing to invoke this act on its own behalf. Feinstone v. Potomac Group, Inc., 122 WLR 233 (Super. Ct. 1993).

Once complaint is filed, merchant must be given chance to explain the occurrence, and a thorough investigation must be made. Baker v. District of Columbia, App. D.C., 494 A.2d 1299 (1985).

Section does not require that the trade practice be committed by the same merchant who filed the suit to collect the debt. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

"Merchant." — An auctioneer, as an actor clearly "connected with the 'supply' side" of the transaction, was a "merchant" within the meaning of subdivision (k)(4). Adam A. Weschler & Son v. Klank, App. D.C., 561 A.2d 1003 (1989).

Entities considered to be "merchant." — Plaintiff who supplied consumer credit to defendants could properly be considered a "merchant" under the terms of this section. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

This section requires that assignees of consumers' retail installment contracts are subject to treatment as "merchants," whether or not they actually sold the products involved in a consumer complaint. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

Legislative intent of attorneys' fees provisions is to encourage vindication of important rights on the part of plaintiffs who ordinarily could not afford to ventilate their claims. Greene v. Gibraltar Mtg. Inv. Corp., 529 F. Supp. 186 (D.D.C. 1981).

Office of Consumer Protection cannot ignore terms of settlement contract. — The Office of Consumer Protection, when it is the plaintiff in an action to enforce a settlement contract, cannot ignore the terms of that contract and bypass its own procedures for claim investigation and adjudication. Baker v. District of Columbia, App. D.C., 494 A.2d 1299 (1985).

Terms of settlement agreement preventing Superior Court jurisdiction. — The Superior Court had no jurisdiction to adjudicate the merits of the underlying consumer complaint against a contractor, where the settlement agreement contained a denial of illegality on the part of the contractor and a reservation of the right to a hearing before the agency on the underlying claim. Baker v. District of Columbia, App. D.C., 494 A.2d 1299 (1985).

Office may pursue damages as well as enforce decree. — The Office of Consumer Protection, or its successor, the Department of Consumer and Regulatory Affairs, is not limited to enforcement of a consent decree as its sole remedy but may be awarded damages. District of Columbia v. Baker, 112 WLR 509 (Super. Ct. 1984).

Paragraph (1) of subsection (k) does not mandate treble damage recovery, it merely allows such recovery. Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986).

Treble and punitive damages are considered mutually exclusive remedies, and prohibited as simultaneous recoveries arising out of the same conduct on constitutional grounds, because such a double recovery of a penalty offends notions of due process. Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986).

Where a plaintiff has already received a substantial punitive damage award under subsection (k)(1)(C), authorized to accommodate the same interests which treble damage provisions traditionally serve, a court is justified as a matter of its discretion in concluding that trebling of compensatory damages is unnecessary and unwarranted. Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986).

Punitive damages warranted. — Trial court's finding that heating contractor was guilty of a continuing failure to admit to its mistakes, and of an unwillingness to rectify the situation, was sufficient to warrant an award of punitive damages. Rowan Heating-Air Conditioning-Sheet Metal, Inc. v. Williams, App. D.C., 580 A.2d 583 (1990).

Subsection (k)(4) constitutes defense to merchant's suit. — Subsection (k)(4) is not merely the procedural mechanism for resolving disputes; it is asserted only after a merchant has filed suit to collect a debt against the consumer and since it entitles the consumer to have the suit removed from the court, either by dismissal or remand, it constitutes a defense to the merchant's suit. Chrysler First Fin. Servs. Corp. v. Fuller, 116 WLR 537 (Super. Ct. 1988).

Jurisdiction in action for violation of § 28-3904. — The United States District Court has jurisdiction to hear action alleging violations of § 28-3904 despite the fact that subsection (k)(1) of this section provides for a cause of action to be brought in the Superior Court of the District of Columbia. Independent Communications Network, Inc. v. MCI Telecommunications Corp., 657 F. Supp. 785 (D.D.C. 1987).

Cited in Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983); Gaines v. Continental Mtg. & Inv. Corp., 865 F.2d 375 (D.C. Cir. 1989); Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 566 A.2d 462 (1989); Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989); Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 634 A.2d 433 (1993), cert. denied, — U.S. —, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994); Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

§ 28-3906. Consumer education and information.

(a) The Office of Consumer Education and Information shall:

(1) inform the public and the business community of existing laws, regulations and guidelines concerning consumer rights and standards of fair treatment;

(2) coordinate consumer education programs with, and use consumer education programs to help carry out, the consumer protection programs of the Office;

(3) handle publicity for the Office [Department] concerning cases under section 28-3905, when the Director requests;

(4) aid the Director in the formulation of consumer protection plans and recommend legislation and regulations related to consumer education;

(5) cooperate with consumer-related agencies, groups and individuals in the D.C. area to improve consumer education efforts.

(b) The Chief of the Office of Consumer Education and Information shall be appointed by the Director. (1973 Ed., T. 28, Appx., § 7; July 22, 1976, D.C. Law 1-76, § 7, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 8, 1991, D.C. Law 8-234, § 2(g), 38 DCR 296.)

Section references. — This section is referred to in § 28-3901.

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 3-85. — See note to § 28-3901.

Legislative history of Law 8-234. — See note to § 28-3909.

Editor's notes. — The bracketed language has been inserted in (a)(3) to correct an error in D.C. Law 8-234.

§ 28-3907. Advisory Committee on Consumer Protection.

(a) There shall be an Advisory Committee on Consumer Protection consisting of 11 members appointed by the Mayor for three-year terms. The nongovernmental members, immediately prior to the effective date of this chapter, of the Advisory Committee on Consumer Affairs established in Organization Order No. 40 (C.O. 73-225; October 3, 1973), shall carry out their terms. No District Government employees shall be members. Four members shall be District merchants. Seven members shall be persons with demonstrated and current records of activity on behalf of consumers.

(b) The Committee shall:

(1) recommend priorities in, and, at the Committee's discretion, carry out investigations and research, which concern broad, developing, or frequently encountered consumer problems;

(2) assist the Director as the Director may request;

(3) monitor the performance and organization of the Office, by quantitative and qualitative methods, and make recommendations and criticisms, based thereon; and

(4) cooperate with consumer-related agencies, groups, and individuals in the District and in the metropolitan area to improve city-wide and area-wide consumer protection and education efforts.

(c) The Committee shall elect one of its members as Chairperson and another as Vice-Chairperson, each to serve at the pleasure of the Committee, and such other officers and subcommittees as it determines.

(d) The Office shall provide staff support for the Advisory Committee. Appropriate expenses incurred by the Committee as a whole, or by individual members, may be paid when authorized by the Director.

(e) The Committee shall meet on call by the Chairperson as frequently as required to perform its duties, but no less than once each month, and it shall submit an annual report to the Mayor, Council, and the public.

(f) The Committee shall hold public hearings as deemed necessary. (1973 Ed., T. 28, Appx., § 8; July 22, 1976, D.C. Law 1-76, § 8, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900.)

Section references. — This section is referred to in § 28-3901.

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 3-85. — See note to § 28-3901.

§ 28-3908. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter, and the application of such provision to other persons not similarly situated or to other

circumstances, shall not be affected. (1973 Ed., T. 28, Appx., § 9; July 22, 1976, D.C. Law 1-76, § 9, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900.)

Legislative history of Law 1-76. — See note to § 28-3901.

Legislative history of Law 3-85. — See note to § 28-3901.

§ 28-3909. Restraining prohibited acts.

Notwithstanding any provision of law to the contrary, if the Corporation Counsel has reason to believe that any person is using or intends to use any method, act, or practice in violation of section 28-3803, 28-3805, 28-3807, 28-3810, 28-3811, 28-3812, 28-3814, 28-3817, 28-3818, 28-3819, or 28-3904, and if it is in the public interest, the Corporation Counsel, in the name of the District of Columbia, may petition the Superior Court of the District of Columbia to issue a temporary or permanent injunction against the use of the method, act, or practice. In any action under this section, the Corporation Counsel shall not be required to prove damages and the injunction shall be issued without bond. The Corporation Counsel, on behalf of any identifiable person, may recover restitution for property lost or damages suffered as a consequence of the unlawful act or practice. (Mar. 8, 1991, D.C. Law 8-234, § 2(h), 38 DCR 296.)

Legislative history of Law 8-234. — Law 8-234, the "District of Columbia Consumer Protection Procedures Act Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-111, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-317 and transmitted to both Houses of Congress for its review.

CHAPTER 40. HEARING AID DEALERS AND CONSUMERS.

Sec.
28-4001. Definitions.
28-4002. Powers and duties of the Office of Consumer Protection.
28-4003. Registration.
28-4004. Special provisions.
28-4005. Minimal procedures.
28-4006. Grounds for revocation and suspension.
28-4007. Severability.

§ 28-4001. Definitions.

As used in this chapter, the term —

(1) "audiologist" means any person who has at least a master's degree in audiology and meets the requirements of the American Speech-Language-Hearing Association Certificate of clinical competence or the equivalent in the determination of the Board of Medicine. The title "audiologist" shall not be used singly or in combination with other words unless the person using the title holds the appropriate certification from the American Speech-Language-Hearing Association.

(2) "fitting and selling of hearing aids" means those practices used for the purpose of making selection, adaptation or sale of hearing aids.

(3) "hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories of that wearable instrument, excluding batteries, cords or earmolds.

(4) "hearing test evaluation" means a written statement, based on testing conducted by an audiologist, otolaryngologist, or a medical technician directly supervised by an otolaryngologist. The statement shall include the following information:

(A) the ear or ears to be fitted;
(B) the type of earmold;
(C) the gain (amplification) of the hearing aid;
(D) the minimum and maximum power output of a hearing aid;
(E) the frequency response of the hearing aid;
(F) the results of pure tone and speech audiometry; and
(G) the date of the hearing test.

This shall not prevent an audiologist or otolaryngologist from recommending a specific make and model of hearing aid.

(5) "medical clearance" means a written statement based upon a medical examination by an otolaryngologist, that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid. The statement must include the date of the medical examination.

(6) "Office" means the Office of Consumer Protection of the District of Columbia.

(7) "otolaryngologist" means a physician licensed in the District of Columbia who specializes in medical problems of the ear, nose, and throat.

(8) "person" means any individual, partnership, association, organization, or corporation.

(9) "registrant" means a hearing aid dispenser, audiologist, or otolaryngologist who engages in the practice of fitting and selling hearing aids and who has registered pursuant to section 4 [§ 28-4003].

(10) "sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease, bailment, hire-purchase, or any other means, excluding wholesale transactions of dealers and distributors.

(11) "telephone option" means an option available on hearing aids which enables the wearer to hear the electrical signal on the telephone line rather than the acoustic signal produced by the telephone.

(12) "used hearing aid" means a hearing aid which has been worn for any period of time by a buyer or potential buyer.

(13) "hearing aid dispenser" means a person who is at least 18 years of age, has a high school diploma or the equivalent, and has received a certificate of competence from the National Hearing Aid Society or another recognized national organization approved by the Department of Consumer and Regulatory Affairs. (1973 Ed., T. 28, Appx., § 52; Oct. 26, 1977, D.C. Law 2-33, § 2, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(a), 34 DCR 6847.)

Legislative history of Law 2-33. — Law 2-33, the "Hearing Aid Dealers and Consumer Act of 1977," was introduced in Council and assigned Bill No. 2-39, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 12, 1977 and July 26, 1977, respectively. Signed by the Mayor on August 17, 1977, it was assigned Act No. 2-79 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — Law 3-85, the "Enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980 and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-46. — Law 7-46, the "Hearing Aid Dealers and Consumers Act of 1977 Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-51, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-79 and transmitted to both Houses of Congress for its review.

Editor's notes. — "§ 28-4003" was inserted in brackets in paragraph (9) of this section to translate a reference.

§ 28-4002. Powers and duties of the Office of Consumer Protection.

The Office shall:

(1) issue and renew certificates of registration to engage in the business of fitting and selling of hearing aids, as provided in section 28-4003; and

(2) implement and enforce the provisions of this chapter by utilizing the powers, procedures and sanctions of the Office, as provided for in sections 28-3903 and 28-3905 of the "District of Columbia Consumer Protection Procedures Act", approved July 22, 1976 (D.C. Law 1-76) and the regulations of the Office. (1973 Ed., T. 28, Appx., § 53; Oct. 26, 1977, D.C. Law 2-33, § 3, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900.)

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

§ 28-4003. Registration.

(a) It is unlawful for a person to engage in the practice of fitting and selling of hearing aids without having first obtained a certificate of registration from the Office under the provisions of this chapter.

(b) Nothing in this chapter shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address in the District of Columbia from engaging in the business of fitting and selling of, or offering for sale, hearing aids at retail without a certificate of registration; provided, that any and all such fitting and selling of hearing aids is conducted by individuals who are registered pursuant to section 28-4003. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the Office a list of all individuals holding valid certificates of registration who are directly or indirectly employed by them.

(c) Each person desiring to obtain a Certificate of Registration from the Office to engage in the practice of fitting and selling of hearing aids shall make an application to the Office. The application shall be made upon a form and in such manner as the Office shall provide. It shall set forth:

(1) the name and business address of the applicant:

(A) if an individual, the name under which he or she intends to conduct business;

(B) if a partnership, the name and business address of each member thereof and the name under which the business is to be conducted; or

(C) if a corporation, the name of the corporation and the name and business address of each of the officers of the corporation.

Any applicant who intends to conduct business under a fictitious name shall file with the application a copy of the registration of that fictitious name;

(2) the place or places, including the complete address or addresses, where the business is to be conducted; and

(3) such further information as the Office may prescribe.

(d) The Office shall act upon an application for a certificate of registration within thirty (30) days after receiving the application. Each application shall be accompanied by an application fee, which shall in no event be refunded. If an application is approved by the Office, upon payment of a registration fee, the applicant shall be granted a certificate of registration to be valid for a period determined by the Mayor of the District of Columbia. The certificate shall be conspicuously posted in the place of business of the registrant. In the case of loss, mutilation, or destruction of a certificate, the Office shall issue a duplicate certificate, upon proof of facts and payment of a fee.

(e) If a registrant maintains more than one place of business within the District, he or she shall apply for and procure a duplicate certificate for each place of business. If a registrant has a change of address of place of business, he or she shall notify the Office within fifteen (15) days of such change.

(f) Certificates expire on the date determined by the Mayor of the District of Columbia. An unexpired certificate may be renewed by applying to the Office

on the form prescribed by the Office and the payment of a renewal fee. Late applications for registration or renewal shall be an additional amount. The Office shall act on an application for renewal within thirty (30) days after receiving the application.

(g) The Office shall not prevent an applicant for a certificate of registration from fitting and selling of hearing aids pending a determination of the initial application within six (6) months after the effective date of this chapter.

(h) Repealed.

(i) The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any certificate of registration authorized under this chapter may be issued. The Mayor of the District of Columbia is authorized to set and change from time to time the amount of any fees provided for in sections 28-4003 (d) and 28-4003 (f). (1973 Ed., T. 28, Appx., § 54; Oct. 26, 1977, D.C. Law 2-33, § 4, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(b), 34 DCR 6847.)

Section references. — This section is referred to in §§ 28-4001 and 28-4002.

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

Legislative history of Law 7-46. — See note to § 28-4001.

§ 28-4004. Special provisions.

(a) No registrant shall fit, offer for sale, or sell a hearing aid to a person unless, within the preceding three (3) months, the person has received a medical clearance after an examination by an otolaryngologist and a hearing test evaluation.

(b) No registrant shall sell a hearing aid not conforming to the hearing test evaluation required without prior consultation and written approval from the signer of the hearing test evaluation.

(c) Sections 28-4004(a) and 28-4004(b) do not apply to —

(1) The purchase of an identical hearing aid within two (2) years of the date that the purchaser receives the original aid; and

(2) the purchase of parts, attachments or accessories of the telephone designed to aid the hearing-impaired.

(d) If a prospective hearing aid user has a bona fide religious belief which precludes him or her from having a medical examination as required in section 28-4004 (a), the prospective hearing aid user may waive the medical examination requirement; provided, that the prospective hearing aid user signs the following statement, printed in ten (10)-point type:

"My religious beliefs require that I waive the medical examination and the hearing aid evaluation required by the 'Hearing Aid Dealer and Consumers Act of 1977' for the purchase of a hearing aid. I voluntarily waive the medical examination, notwithstanding the fact that I have been advised by

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that my best health interest would be served if I had a medical evaluation by a physician who is an ear specialist."

No registrant shall seek to induce a prospective hearing aid user to execute such a waiver.

(e) Repealed.

(f) No hearing aid shall be sold to any person unless accompanied by a thirty (30) day money-back written guarantee providing that if the customer returns the hearing aid within thirty (30) days in the same condition as when purchased the customer shall be entitled to the return of the cost of the hearing aid and accessories as itemized on the bill provided pursuant to section 28-4005 (a), but in no case shall the hearing aid dealer be permitted to retain a service charge greater than five percent (5%) of the cost of the hearing aid and accessories and the cost of the earmold.

(g) No registrant or agent thereof shall visit the home or shall telephone any potential buyer for the purpose of inducing a sale of a hearing aid without having obtained, prior to the visit, the express written consent of the buyer to that visit. Any consent shall clearly and conspicuously state that the buyer is aware that the seller may attempt to sell a hearing aid during the visit. (1973 Ed., T. 28, Appx., § 55; Oct. 26, 1977, D.C. Law 2-33, § 5, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(c), 34 DCR 6847.)

Section references. — This section is referred to in § 28-4005.

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

Legislative history of Law 7-46. — See note to § 28-4001.

§ 28-4005. Minimal procedures.

(a) Each hearing aid sale shall be accompanied by a receipt that includes:

(1) the name, address, and signature of the purchaser;

(2) the date of consummation of the sale;

(3) the name and address of the regular place of business, the number of the certificate of registration, and the signature of the registrant;

(4) the make, model, serial number, and purchase price of the hearing aid;

(5) a statement as to whether the hearing aid is "new" or "used";

(6) the complete terms of the sale, including:

(A) an itemization of the total purchase price, including but not limited to the cost of the hearing aid, the earmold, any batteries or other accessories, and any service costs; and

(B) a clear and precise statement of the terms of the trial period and the terms of any guarantee or warranty, including disclosures made pursuant to section 28-4006(a)(3)(H);

(7) the title and address of the Office, with a statement that complaints which arise with respect to the transaction may be submitted to the Office;

(8) the original of the written recommendation;

(9) the following statements in ten (10)-point type or larger:

(A) "This hearing aid will not restore normal hearing nor will it prevent further hearing loss";

(B) "No hearing aid may be sold to you without a prior medical examination"; and

(C) "A return visit to a physician who is an ear specialist or audiologist after the purchase of this aid will help you in best adapting to it"; and

(10) if the hearing aid sold has a telephone option, a statement that the telephone option will not work on all telephones and a statement indicating the types of telephones upon which it will work.

(b) Each registrant shall keep records for every customer to whom he or she renders services or sells a hearing aid, including:

(1) a copy of the receipt as specified in subsection (a) of this section;

(2) a record of services provided;

(3) any correspondence to or from the customer; and

(4) any waiver forms, as provided under section 28-4004(d). Such records shall be preserved for seven (7) years after the date of the transaction.

(c) Each registrant shall post conspicuously in large print at his or her place(s) of business and make available for inspection at any sale a retail price list showing all hearing aid models for sale. (1973 Ed., T. 28, Appx., § 56; Oct. 26, 1977, D.C. Law 2-33, § 6, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900.)

Section references. — This section is referred to in § 28-4004.

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

§ 28-4006. Grounds for revocation and suspension.

(a) In addition to those practices prohibited under section 28-3904, the Office may deny the application for a certificate of registration or may suspend or revoke the certificate of registration of any hearing aid dealer issued pursuant to this chapter or may refuse to issue a renewal if it has been determined by the Office or a court of competent jurisdiction that such registrant has:

(1) made a material false statement or concealed a material fact in connection with an application for a certificate;

(2) had a certificate of registration issued under this chapter revoked or suspended previously;

(3) been guilty of fraud or fraudulent practices or has practiced dishonest or misleading advertising, including but not limited to:

(A) advertising a particular model, type, or kind of hearing aid when the offer is not a bona fide effort to sell the product so offered as advertised;

(B) advertising that a hearing aid is a new invention or involves a new mechanical, engineering, or scientific concept or principle in hearing aid capability;

(C) advertising that a hearing aid will be beneficial to persons with hearing loss, regardless of the type of hearing loss;

(D) advertising that a hearing aid will enable persons with a hearing loss to consistently distinguish and understand speech sounds in noisy situations;

(E) representing that the services or advice of a person licensed to practice medicine or of a person licensed as an audiologist will be used or made

available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true;

(F) Using or incorporating in any title or designation the words "doctor", "clinic", "clinical audiologist", "hearing aid audiologist", or any other term unless legally qualified to use the term, abbreviation, or symbol;

(G) wearing any costume, which would tend to give a false impression that one is being treated medically or tested by an audiologist;

(H) representing, advertising, or implying that the hearing aid or repair is guaranteed, without a clear and concise disclosure of the identity of the guarantor, the nature and extent of the guarantee and any condition or limitations imposed;

(I) stating or implying that the use of any hearing aid will restore hearing to a normal level, preserve hearing, prevent or retard progression of a hearing impairment, save a person from deafness, or any other false or misleading medically or audiologically unsupportable claims regarding the efficacy or benefits of a hearing aid;

(J) representing or implying that a hearing aid is or will be "custom made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case; and

(K) representing that a hearing aid has a telephone option, unless it is clearly and conspicuously disclosed that the telephone option will not work on all types of telephones;

(4) been grossly negligent in the fitting, selling, or repairing of any hearing aid;

(5) failed to comply with any other provision of this chapter or any rules or regulations promulgated hereunder; and

(6) directly or indirectly giving, offering to give, permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity, as an inducement to influence such person, to have such person influence others, to purchase or contract to purchase any product sold or offered for sale by the registrant, or to influence any person to refrain from dealing in the products of competitors.

(b) For the purposes of paragraphs (3), (4), (5), and (6) of subsection (a) of this section, the actions of any employee of a hearing aid dealer shall be attributed to and deemed to be actions of such hearing aid dealer.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act [this chapter], or any rules or regulations issued under the authority of this act [this chapter], pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 27 of Title 6]. Adjudication of any infraction of this act [this chapter] shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 27 of Title 6]. (1973 Ed., T. 28, Appx., § 57; Oct. 26, 1977, D.C. Law 2-33, § 7, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(d), 34 DCR 6847; Mar. 8, 1991, D.C. Law 8-237, § 19, 38 DCR 314.)

Section references. — This section is referred to in § 28-4005.

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

Legislative history of Law 7-46. — See note to § 28-4001.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Editor's notes. — The bracketed material appearing in (c) was set out to correct errors in D.C. Law 8-237.

§ 28-4007. Severability.

The provisions of this chapter are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this chapter or its application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, inapplicable, or unconstitutional provision, sentence, clause, section, or part had not been included herein and if the person or circumstances to which the chapter or any part is inapplicable had been specifically exempted. (1973 Ed., T. 28, Appx., § 58; Oct. 26, 1977, D.C. Law 2-33, § 8, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900.)

Legislative history of Law 2-33. — See note to § 28-4001.

Legislative history of Law 3-85. — See note to § 28-4001.

CHAPTER 41. NATURAL DISASTER CONSUMER PROTECTION.

Sec.
28-4101. Definitions.
28-4102. Overcharging.
28-4103. Penalties.

§ 28-4101. Definitions.

For the purposes of this chapter, the term:

(1) "Natural disaster" means the actual or imminent consequence of any disaster, catastrophe, or emergency, including fire, other than a fire caused by human error or arson, flood, earthquake, storm, or other serious act of nature, which threatens the health, safety, or welfare of persons or causes damage to property in the District of Columbia.

(2) "Normal average retail price" means:

(A) In the case of services, not more than 10% more than the price at which similar services were sold or offered in the Washington Metropolitan Area during the 90-day period that preceded an emergency that resulted from a natural disaster, if an emergency is declared pursuant to § 28-4102(b); or

(B) In the case of merchandise, the price equal to the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to § 28-4102(b).

(3) "Person" means a corporation, firm, agency, company, association, organization, partnership, society, joint stock company, or an individual. (Mar. 20, 1992, D.C. Law 9-80, § 2, 39 DCR 675; Feb. 5, 1994, D.C. Law 10-68, § 27(g), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 23, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10-68 substituted "chapter" for "act" in the introductory language.

D.C. Law 10-255 validated a previously made change in the introductory language.

Legislative history of Law 9-80. — Law 9-80, the "Natural Disaster Consumer Protection Act of 1992," was introduced in Council and assigned Bill No. 9-78, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 3, 1991, and January 7, 1992, respectively. Signed by the Mayor on January 28, 1992, it was assigned Act No. 9-137 and transmitted to both Houses of Congress for its review. D.C. Law 9-80 became effective on March 20, 1992.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 28-4102. Overcharging.

(a) It shall be unlawful for any person to charge more than the normal average retail price for any merchandise or service sold during an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to subsection (b) of this section.

(b)(1) Within 48 hours of a natural disaster, the Mayor may declare, for not more than 30 calendar days, a state of emergency for the purposes of this act. The Mayor shall prepare an emergency declaration that shall include a description of the existence, nature, extent, and duration of the emergency.

(2) Upon the issuance of a declaration of an emergency or as soon as practicable given the nature of the emergency, the Mayor shall publish a copy of the emergency declaration in the District of Columbia Register and in 2 daily newspapers of general circulation. (Mar. 20, 1992, D.C. Law 9-80, § 2, 39 DCR 675.)

Section references. — This section is referred to in § 28-4103.

Legislative history of Law 9-80. — See note to § 28-4101.

§ 28-4103. Penalties.

(a)(1) A person who violates § 28-4102(a) shall be subject to a fine of not more than $1,000.

(2) The Mayor may revoke, suspend, or limit the license, permit, or certificate of occupancy of a person who violates § 28-4102(a).

(b) A violation of § 28-4102(a) shall be a civil infraction for the purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*) ("Civil Infractions Act"). Civil fines, penalties, and fees may be imposed as sanctions for any infraction, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to titles I-III of the Civil Infractions Act. (Mar. 20, 1992, D.C. Law 9-80, § 2, 39 DCR 675; Feb. 5, 1994, D.C. Law 10-68, § 27(h), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 substituted "§ 28-4102(a)" for "section 3(a)" twice in (a) and once in the first sentence of (b); and substituted "subchapters I through III of Chapter 27 of title 6" for "titles I-III of the Civil Infractions Act" in the second sentence of (b).

Legislative history of Law 9-80. — See note to § 28-4101.

Legislative history of Law 10-68. — See note to § 28-4101.

CHAPTER 42. RADON CONTRACTOR PROFICIENCY.

Sec.
28-4201. Proficiency requirement.
28-4202. Rulemaking.
28-4203. Penalty.

§ 28-4201. Proficiency requirement.

(a) No person or company shall conduct or offer to conduct any radon screening, testing, or mitigation in the District for a fee unless that person has been listed as proficient by the United States Environmental Protection Agency to offer radon screening, testing, or mitigation services.

(b) The Mayor shall maintain, revise as necessary, and make available to the public a list of persons or companies who have been listed as proficient by the United States Environmental Protection Agency to offer screening, testing, or mitigation for radon. (Mar. 13, 1993, D.C. Law 9-183, § 2(b), 39 DCR 8206.)

Legislative history of Law 9-183. — Law 9-183, the "Radon Contractor Proficiency Act of 1992," was introduced in Council and assigned Bill No. 9-69, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-303 and transmitted to both Houses of Congress for its review. D.C. Law 9-183 became effective on March 13, 1993.

Delegation of Authority Pursuant to D.C. Law 9-183, the D.C. Radon Proficiency Act of 1992. — See Mayor's Order 94-114, May 9, 1994 (41 DCR 2863).

§ 28-4202. Rulemaking.

(a) The Mayor may issue proposed rules establishing radon screening, testing, or mitigation programs in the District that are in compliance with any recommendations or guidelines published by the United States Environmental Protection Agency. The proposed rules shall be submitted to the Council for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules by resolution within the 45-day period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(b) The Mayor may issue emergency rules, without prior Council approval, which shall be effective for not more than 120 days. (Mar. 13, 1993, D.C. Law 9-183, § 2(b), 39 DCR 8206.)

Legislative history of Law 9-183. — See note to § 28-4201.

§ 28-4203. Penalty.

A civil fine, penalty, or fee may be imposed as a sanction for an infraction of the provisions of this act, or any rule promulgated pursuant to this act, in

accordance with subchapters I through III of Chapter 27 of Title 6. (Mar. 13, 1993, D.C. Law 9-183, § 2(b), 39 DCR 8206.)

Legislative history of Law 9-183. — See note to § 28-4201.

CHAPTER 45. RESTRAINTS OF TRADE.

Sec.
28-4501. Definition and purpose.
28-4502. Contract, combination, or conspiracy to restrain trade.
28-4503. Monopolization.
28-4504. Exclusions.
28-4505. Civil investigative demand.
28-4506. Criminal enforcement by the District of Columbia.
28-4507. Damages and injunctive relief for injuries to or within the District of Columbia.
28-4508. Relief for private parties.
28-4509. Indirect purchasers.
28-4510. Judgment in favor of the District of Columbia as prima facie evidence.
28-4511. Limitations on actions.
28-4512. Assurance of discontinuance.
28-4513. Cooperation with federal government and states.
28-4514. Remedies cumulative.
28-4515. Uniformity.
28-4516. District of Columbia Antitrust Fund.
28-4517. Severability.
28-4518. Relation to other law.

§ 28-4501. Definition and purpose.

(a) As used in this chapter, the term "person" includes an individual, corporation, business trust, partnership, business association, or any other legal entity.

(b) The purpose of this chapter is to promote the unhampered freedom of commerce and industry throughout the District of Columbia by prohibiting restraints of trade and monopolistic practices. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — Law 3-169, the "District of Columbia Antitrust Act of 1980," was introduced in Council and assigned Bill No. 3-107, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 28, 1980 and November 12, 1980, respectively. Signed by the Mayor on November 25, 1980, it was assigned Act No. 3-300 and transmitted to both Houses of Congress for its review.

§ 28-4502. Contract, combination, or conspiracy to restrain trade.

Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce all or any part of which is within the District of Columbia is declared to be illegal. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Cross references. — As to restraints of trade, see § 33-742.

Section references. — This section is referred to in § 28-4506.

Legislative history of Law 3-169. — See note to § 28-4501.

Cited in Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988); Johnson v. Greater S.E. Community Hosp. Corp., 951 F.2d 1268 (D.C. Cir. 1991); Johnson v. Greater S.E. Community Hosp. Corp., 903 F. Supp. 140 (D.D.C. 1995).

§ 28-4503. Monopolization.

It shall be unlawful for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce, all or any part of which is within the District of Columbia. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in § 28-4506.

Legislative history of Law 3-169. — See note to § 28-4501.

Cited in Johnson v. Greater S.E. Community Hosp. Corp., 951 F.2d 1268 (D.C. Cir. 1991); Johnson v. Greater S.E. Community Hosp. Corp., 903 F. Supp. 140 (D.D.C. 1995).

§ 28-4504. Exclusions.

(a) Labor of a human being is not a commodity or an article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade.

(b) This chapter does not make illegal the activity of:

(1) any non-profit corporation, trust, or organization established exclusively for religious, charitable, literary, or educational purposes to the extent that the activity is religious, charitable, literary, or educational; or

(2) the Washington Metropolitan Area Transit Authority. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Cross references. — As to another restraint of trade exclusion, see § 29-1142.

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4505. Civil investigative demand.

(a) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, the Corporation Counsel may, prior to the institution of a proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

(b) Each such demand shall:

(1) state the nature of:

(A) the conduct under investigation constituting the alleged antitrust violation; or

(B) the activities under investigation which, if consummated, may result in an antitrust violation; and

(C) the applicable provision of law;

(2) if it is a demand for production of documentary material:

(A) describe the class or classes of documentary material to be produced with sufficient definiteness as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time for the material demanded to be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available;

(3) if it is a demand for answers to written interrogatories:

(A) propound with definiteness the written interrogatories to be answered;

(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

(C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony:

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify an assistant corporation counsel who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

(c) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under:

(1) the standards applicable to subpoenas or subpoenas duces tecum issued by the Superior Court of the District of Columbia in aid of a grand jury investigation; or

(2) the standards applicable to discovery requests under the Superior Court of the District of Columbia Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

(d) Any such demand shall be served in any manner provided for service of process in the Superior Court of the District of Columbia, or if the person to be served has no place of business within the District of Columbia, the demand may be served by depositing a duly executed copy in the United States mails by registered mail, return receipt requested, addressed to such person at that person's principal office or place of business.

(e) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(f) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless such procedure is objected to, in which event the reasons for the objection shall be stated with specificity in lieu of an answer, and such reasons shall be submitted under a sworn certificate.

(g)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the District of Columbia.

The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(2) The assistant corporation counsel conducting the examination shall exclude from the place where the examination is held all other persons: except, the person being examined, the person's counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the District of Columbia, or in such other place as may be agreed upon by the assistant corporation counsel conducting the examination and such person.

(4) When the testimony is fully transcribed, the assistant corporation counsel or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the assistant corporation counsel with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days of the witness being afforded a reasonable opportunity to examine the transcript, the officer or the assistant corporation counsel shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or assistant corporation counsel shall promptly deliver or send the transcript by registered mail, return receipt requested, addressed to the custodian.

(6) Upon request, the assistant corporation counsel shall furnish a copy of the transcript at no cost to the witness only: except, that the Corporation Counsel may for good cause limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when a claim is made that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal

right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the Corporation Counsel may petition the Superior Court of the District of Columbia pursuant to this section for an order compelling such person to answer such question. If such person refuses to answer any question on the grounds of privilege against self-incrimination, the testimony of such person may be compelled by order of court upon the granting of immunity. No testimony or other disclosure compelled under court order or any information directly or indirectly derived from such ordered testimony or disclosure may be used against the person in any criminal case except a prosecution for perjury or otherwise failing to comply with the order.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same mileage reimbursements which are paid to witnesses in the Superior Court of the District of Columbia.

(h) Whenever any person fails to comply with any civil investigative demand duly served upon that person under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Corporation Counsel may file, in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of this chapter. A person who, with the intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand duly and properly made under this section, withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony which is the subject of such demand, or who attempts to do so or solicits another to do so shall upon conviction thereof be fined not more than $5,000 or imprisoned not more than one (1) year or both.

(i) Within 20 days after the service of any such civil investigative demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file in the Superior Court of the District of Columbia and serve upon the Corporation Counsel a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portion of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(j) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of

oral testimony given by any person in compliance with any such demand, such person may file, in the Superior Court of the District of Columbia, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon the custodian by this section.

(k) Any procedure, other than an action to enforce a demand pursuant to subsection (h) of this section, or testimony taken or material produced under this section or voluntarily in the course of an investigation shall be exempt from the provisions of the District of Columbia Freedom of Information Act (sections 1-1521 et seq.) and shall be kept confidential by the Corporation Counsel before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person who has testified, answered interrogatories, or produced material: except, that testimony taken or material or information produced under this section may be disclosed by the Corporation Counsel to any officer or employee of any federal or state law enforcement agency upon the prior certification of an officer of any such federal or state law enforcement agency that such testimony, material, or information will be maintained in confidence and will be used only for official law enforcement purposes.

(l) Unless otherwise authorized or required by law, any employee of the District of Columbia who shall intentionally disclose information kept confidential by subsection (k) of this section shall be guilty of a misdemeanor punishable by a fine up to $500. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in §§ 1-1524 and 28-4513.

Legislative history of Law 3-169. — See note to § 28-4501.

Cited in Shepherd Park Citizens Ass'n v. General Cinema Beverages of Wash., D.C., Inc., App. D.C., 584 A.2d 20 (1990).

§ 28-4506. Criminal enforcement by the District of Columbia.

Every person who violates section 28-4502 or 28-4503 shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $50,000, or by imprisonment not exceeding one (1) year, or both. The Corporation Counsel shall commence and try all prosecutions for violations of section 28-4502 or 28-4503. Whenever a corporation violates section 28-4502 or 28-4503, the individual directors, officers, or agents of such corporation who have intentionally authorized, ordered or ratified the acts constituting such violation shall be punishable in accordance with this section. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in §§ 28-4510 and 28-4511.

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4507. Damages and injunctive relief for injuries to or within the District of Columbia.

(a) Whenever the District of Columbia government is injured in its business or property by a violation of this chapter, the Corporation Counsel may bring a civil action in the name of the District of Columbia for damages, or for appropriate injunctive or other equitable relief, or for both, without prejudice to the right of the District of Columbia to bring similar or identical actions under any other statute. In such an action, in addition to any appropriate injunctive or equitable relief, the court may award the District of Columbia damages and the cost of suit, including reasonable attorney's fees.

(b) The Corporation Counsel may bring a civil action in the name of the District of Columbia as parens patriae on behalf of any individual residing in the District of Columbia in any court of competent jurisdiction for injury sustained by such individual to such individual's property by reason of any violation of this chapter.

(1) The court shall award the District of Columbia, as monetary relief, threefold the total damages sustained by such natural persons, and the cost of suit, including reasonable attorney's fees.

(2) Monetary relief recovered in an action under this subsection shall:

(A) be distributed in such manner as the court may authorize; or

(B) be deemed a civil penalty by the court and deposited with the District of Columbia, subject in either case to the requirement that any distribution procedures adopted shall first afford each person a reasonable opportunity to secure each such person's appropriate portion of the net monetary relief.

(c)(1) In any action brought under subsection (b) of this section, the Corporation Council shall, at such times, in such manner, and with such content as the court may direct, cause notice to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court shall direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (b) of this section may elect to exclude from adjudication the portion of the District of Columbia claim for monetary relief attributable to that person by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(d) In any action under subsection (b) of this section, in which there has been a determination that a defendant violated a provision of this chapter, damages may be proved and assessed in the aggregate by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court may permit, without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(e) The court may award under this section, pursuant to a motion by the District of Columbia promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the District of

Columbia setting forth a claim under this chapter and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just under the circumstances. In determining whether an award of interest under this section for any period is just under the circumstances, the court shall consider only:

(1) whether the District of Columbia or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the District of Columbia or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether the District of Columbia or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in § 28-4511.

Legislative history of Law 3-169. — See note to § 28-4501.

Approval of settlement agreement. — There was no abuse of discretion where trial court approved settlement of parens patriae claims when trial court had sufficient facts before it to make an informed judgment that the settlement was fair, reasonable and adequate. Shepherd Park Citizens Ass'n v. General Cinema Beverages of Wash., D.C., Inc., App. D.C., 584 A.2d 20 (1990).

Cited in Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983).

§ 28-4508. Relief for private parties.

(a) Any person who is injured in that person's business or property by reason of anything forbidden by this chapter may bring a civil action for damages, for appropriate injunctive or other equitable relief, or for both. In such an action, in addition to any appropriate injunctive or equitable relief, the court shall award as monetary relief: (1) threefold the total damage sustained by such person; and (2) as determined by the court, the costs of suit including reasonable attorney's fees.

(b) The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under this chapter and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just under the circumstances. In determining whether an award of interest under this section for any period is just under the circumstances, the court shall consider only:

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule,

statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(c) In any class action brought under this section by purchasers or sellers, the fact of injury and the amount of damages sustained by the members of the class may be proven on a class-wide basis, without requiring proof of such matters by each individual member of the class. The percentage of total damages attributable to a member of such class shall be the same as the ratio of such member's purchases or sales to the purchases or sales of the class as a whole. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in §§ 28-4510 and 28-4511.

Legislative history of Law 3-169. — See note to § 28-4501.

Cited in Baccus v. Franklin Inv. Co., 114 WLR 745 (Super. Ct. 1986).

§ 28-4509. Indirect purchasers.

(a) Any indirect purchaser in the chain of manufacture, production, or distribution of goods or services, upon proof of payment of all or any part of any overcharge for such goods or services, shall be deemed to be injured within the meaning of this chapter.

(b) In actions where both direct and indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages.

(c) In any case in which claims are asserted by both direct purchasers and indirect purchasers, the court may transfer and consolidate cases, apportion damages and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages, and to obtain substantial fairness. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Section references. — This section is referred to in § 28-4510.

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4510. Judgment in favor of the District of Columbia as prima facie evidence.

A final judgment or decree determining that a person has violated this chapter in an action brought by the District of Columbia under section 28-4506, other than a consent judgment or decree entered before any testimony at trial has been taken or entered pursuant to a plea of nolo contendere, shall be prima facie evidence against such person in any other action against such person under section 28-4508 or 28-4509 as to all matters with respect to which the judgment or decree would be an estoppel between the parties to that judgment or decree. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4511. Limitations on actions.

(a) An action under section 28-4506 to recover a criminal penalty is barred if the action is not commenced within four (4) years after the commission of an act constituting in whole or in part the offense or wrongful action charged.

(b) An action under section 28-4507 or 28-4508 to recover damages is barred if the action is not commenced within four (4) years after the cause of action accrues, or within one (1) year after the conclusion of any timely action brought by the District of Columbia under section 28-4506, based in whole or in part on any matter complained of in the action for damages under section 28-4507 or 28-4508, whichever is later. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4512. Assurance of discontinuance.

(a) In enforcing this chapter, the Corporation Counsel may accept an assurance of discontinuance of an act or practice considered in violation of this chapter from any person engaged in the act or practice.

(b) The assurance of discontinuance shall be in writing and shall be effective only upon the approval of the Superior Court of the District of Columbia.

(c) The assurance of discontinuance may not be considered for any purpose as an admission of a violation. Proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this chapter. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4513. Cooperation with federal government and states.

Except as provided in section 28-4505 (k), the Corporation Counsel may cooperate with the federal government and the states in the enforcement of this chapter. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4514. Remedies cumulative.

The remedies provided for in this chapter are cumulative. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4515. Uniformity.

It is the intent of the Council of the District of Columbia that in construing this chapter, a court of competent jurisdiction may use as a guide interpretations given by federal courts to comparable antitrust statutes. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4516. District of Columbia Antitrust Fund.

(a) There is established a "District of Columbia Antitrust Fund" (hereafter referred to as "the Fund") to be operated as a proprietary fund with assets not to exceed $500,000 at any time. The Fund shall consist of such sums as may be appropriated to the Fund, such sums as may be transferred to the Fund pursuant to a court order or judgment in an antitrust action, gifts or grants made to support antitrust activities, such sums as may be received by the District of Columbia as criminal or civil penalties or in recovery of costs and attorney's fees in an antitrust action, and such sums as may be received by the District of Columbia pursuant to a settlement of an antitrust action. Nonappropriated monies in the Fund shall remain available without fiscal year limitation. Any balance in excess of that allowed the Fund shall be deposited in the General Fund of the District of Columbia.

(b) The District of Columbia Antitrust Fund shall be available for use by the Corporation Counsel for the payment of costs, expenses, and charges incurred in and reasonably related to the investigation, preparation, institution, and maintenance of antitrust actions under the District of Columbia Antitrust Act and Federal antitrust laws.

(c) All income and expenses of the Fund shall be audited annually by the Mayor and reported to the Council of the District of Columbia. Requests for appropriations shall be forwarded to the Council of the District of Columbia by the Mayor in the same manner as budget requests for other agencies. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

Cited in Shepherd Park Citizens Ass'n v. General Cinema Beverages of Wash., D.C., Inc., App. D.C., 584 A.2d 20 (1990).

§ 28-4517. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

§ 28-4518. Relation to other law.

Nothing contained in this chapter shall be applicable to conduct or activity specifically regulated, permitted, or required by any regulatory body, agency, or commission acting under statutory authority of the District of Columbia or the United States. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368.)

Legislative history of Law 3-169. — See note to § 28-4501.

CHAPTER 45A. CIGARETTE SALES BELOW COST.

Sec.
28-4521. Definitions.
28-4522. Prohibitions.
28-4523. Exceptions.
28-4524. Unfair trade practice.
28-4525. Penalties.
28-4526. Effect of judgment.
28-4527. Rulemaking.

§ 28-4521. Definitions.

For the purposes of this chapter, the term:

(1) "Cash and carry" means the purchaser is responsible for the transportation of a purchased article or product to the purchaser's designated destination.

(2) "Cigarettes" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco. The term "cigarettes" does not include cigars.

(3) "Cost" means the invoice or replacement cost, whichever is lower, of cigarettes to the retailer or wholesaler, plus:

(A) The cost of doing business by the retailer or wholesaler; or

(B) In the absence of proof of the cost of doing business, a markup of 2% on the total of the invoice or replacement cost, and the face value of any applicable excise taxes, shall be prima facie proof of the cost of doing business with regard to cigarettes being sold at wholesale; and

(C) In the absence of proof of the cost of doing business, a markup of 8% on the total of the invoice or replacement cost shall be prima facie proof of the cost of doing business with regard to cigarettes being sold at retail.

With regard to any determination of the cost of cigarettes to a wholesaler or retailer, a fractional part of a cent equal to 1/10 of 1% or more shall be rounded off to the next higher cent. Except as provided in § 28-4522, discounts granted for cash payments or electronic fund transfers shall not be used to reduce cost determinations.

Notwithstanding § 28-4522, articles or products given gratis or payments made to a retailer or wholesaler for display, advertising, or promotion purposes shall not be considered in determining the cost of the articles or products.

(4) "Retailer" means any person engaged in the business of making retail sales of cigarettes within the District of Columbia at a store, stand, booth, or concession, through vending machines, or otherwise. If the person is engaged in the business of making both retail and wholesale sales of cigarettes, the term applies only to the retail sales of cigarettes portion of the business.

(5) "Wholesaler" means a person who purchases cigarettes directly from a manufacturer. The term "wholesaler" includes a person, who as a subwholesaler, purchases cigarettes from another wholesaler solely for the purpose of bona fide resale to retailers other than those directly or indirectly owned, affiliated, or controlled by him, and services the retailers by maintaining an established place of business for the sale of cigarettes, including warehouse facilities, adequate inventory, proper accounting records, and necessary equipment and vehicles for the storage and distribution of cigarettes. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Section references. — This section is referred to in § 28-4522.

Legislative history of Law 10-89. — Law 10-89, the "Cigarette Sales Below Cost Act of 1994," was introduced in Council and assigned Bill No. 10-79, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 21, 1994, it was assigned Act No. 10-166 and transmitted to both Houses of Congress for its review. D.C. Law 10-89 became effective on March 22, 1994.

§ 28-4522. Prohibitions.

(a) It shall be unlawful for any individual, corporation, joint stock company, business trust, partnership, business association, or other legal entity engaged in business within the District of Columbia, for the purpose of injuring competitors or destroying competition, to sell, offer for sale, or advertise for sale cigarettes for less than cost, either at retail or wholesale, or to give, offer to give, or advertise an intent to give away any cigarettes for the purpose of injuring competitors or destroying competition.

(b) Notwithstanding subsection (a) of this section and § 28-4521(2), the presumptive wholesale markup of 2% may be reduced by 1/10 of 1% for the wholesale sale of cigarettes on a cash and carry basis. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Section references. — This section is referred to in §§ 28-4521 and 28-4526.

Legislative history of Law 10-89. — See note to § 28-4521.

§ 28-4523. Exceptions.

The prohibitions of § 28-4522 shall not apply to any sale made:

(1) In closing out in good faith the wholesaler's or retailer's stock, or any part thereof, for the purpose of discontinuing the wholesaler's or retailer's trade in any such stock, and in the case of the sale of seasonal goods or the bona fide sale of perishable goods to prevent loss to the wholesaler or retailer by spoilage or depreciation, if adequate notice is given to the public;

(2) When the goods are damaged or deteriorated in quality and notice is given to the public;

(3) By a person affected by this chapter acting under the order of any court of competent jurisdiction;

(4) In an endeavor made in good faith to meet the legal prices of a competitor selling the same article or product or service in the same locality or trade area;

(5) When the product or article is sold upon the final liquidation of a business of the wholesaler or retailer;

(6) Where the article or product is sold for charitable purposes or to relief agencies; or

(7) Where the article or product is sold on contract to any agency or department of the District of Columbia or of the federal, any state, or other local government. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Legislative history of Law 10-89. — See note to § 28-4521.

§ 28-4524. Unfair trade practice.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts for cigarettes, whether in the form of money or otherwise, or secretly extending to certain purchasers of cigarettes special services or privileges not extended to all purchasers of cigarettes, upon like terms and conditions, to the injury of a competitor, and where such payment or allowance tends to destroy competition, is an unfair trade practice. Any wholesaler or retailer of cigarettes resorting to such an unfair trade practice shall be subject to the penalties provided in § 28-4525. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Legislative history of Law 10-89. — See note to § 28-4521.

§ 28-4525. Penalties.

(a) *Injunctive relief.* — Any appropriate agency of the District of Columbia or any person injured by any violation of the provisions of this chapter, or any trade association representative of such a person, may bring an action in the Superior Court of the District of Columbia to prevent, restrain, or enjoin such a violation. In such an action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, in addition to equitable and injunctive relief, the court shall award the plaintiff as monetary relief threefold the total damage sustained by the person, and, as determined by the court, the costs of suit, including reasonable attorney's fees.

(b) *Monetary relief.* — In the event no injunctive relief is sought or required, any person injured by a violation of the provisions of this chapter may maintain an action for damages alone in the Superior Court of the District of Columbia. In such an action, the court shall award the plaintiff as monetary relief threefold the total damage sustained by the person, and, as determined by the court, the costs of suit, including reasonable attorney's fees.

(c) *Suspension or revocation of license.* — The Mayor may suspend or revoke any business license or permit of any wholesaler or retailer engaged in the retail or wholesale trade of cigarettes upon sufficient cause appearing of the violation of any provision of this chapter. Such a wholesaler or retailer shall be entitled to due process, including notice and the opportunity for a hearing before the appropriate agency of the District of Columbia. Any suspension shall be for a period not to exceed 5 consecutive business days. A revocation shall be issued only upon a finding by the appropriate agency of the District of Columbia that the affected business license or permit holder is guilty of wilful and persistent violations of the provisions of this chapter. Any person who has had a business license or permit revoked, pursuant to the terms of this section, may apply to the appropriate agency of the District of Columbia for reinstatement only after the expiration of 1 year. Any suspension or revocation issued pursuant to this section shall be reviewable by the Superior Court of the District of Columbia. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Section references. — This section is referred to in §§ 28-4524 and 28-4526.

Legislative history of Law 10-89. — See note to § 28-4521.

§ 28-4526. Effect of judgment.

A final judgment or decree determining that a person has violated this chapter in an action brought by the District of Columbia under § 28-4522 or § 28-4524, other than a consent judgment or decree entered before any testimony at trial has been taken or entered pursuant to a plea of nolo contendere, shall be prima facie evidence against the person in any other action against the person under § 28-4525(b) and (c) as to all matters with respect to which the judgment or decree would be an estoppel between the parties to that judgment or decree. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Legislative history of Law 10-89. — See note to § 28-4521.

§ 28-4527. Rulemaking.

(a) The Mayor may issue proposed rules, pursuant to subchapter I of chapter 15 of Title 1, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The Mayor may issue emergency rules, without prior Council approval, which shall be effective for not more than 90 days. (Mar. 22, 1994, D.C. Law 10-89, § 2(b), 41 DCR 489.)

Legislative history of Law 10-89. — See note to § 28-4521.

CHAPTER 46. CONSUMER CREDIT SERVICE ORGANIZATIONS.

Sec.
28-4601. Definitions.
28-4602. Registration statement.
28-4603. Prohibited acts.
28-4604. Bond requirements.
28-4605. Disclosure; written agreement required.
28-4606. Enforcement.
28-4607. Penalties.
28-4608. Rulemaking.

§ 28-4601. Definitions.

For the purposes of this act [this chapter], the term:

(1) "Consumer" means any person who is solicited to purchase or who purchases the services of a consumer credit service organization.

(2)(A) "Consumer credit service organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

(i) Improvement of a consumer's credit record, history, or rating;

(ii) Obtain an extension of credit for a consumer; or

(iii) Provide advice or assistance to a consumer regarding any matter related to the consumer's personal, household, or family credit.

(B) A consumer credit service organization shall include a salesperson, agent, or representative of a consumer credit service organization.

(C) A consumer credit service organization shall include an independent agent who sells or attempts to sell the services of a consumer credit service organization.

(D) A consumer credit service organization does not include:

(i) Any person authorized to make a loan or extension of credit under the laws of the District of Columbia ("District") or the United States who is subject to regulation and supervision by the District or the United States, or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. 1701 *et seq.*);

(ii) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or a subsidiary of any bank, savings bank, or savings and loan institution with deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Corporation;

(iii) Any credit union doing business in the District pursuant to the Federal Credit Union Act, approved August 1, 1964 (78 Stat. 377; D.C. Code, sec. 26-601 *et seq.*);

(iv) Any nonprofit organization exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 3; 26 U.S.C. 1 *et seq.*);

(v) Any person who operates a collection agency pursuant to the laws of the District;

(vi) Any person licensed to practice law in the District if the person renders consumer credit services within the course and scope of his or her practice;

(vii) Any broker-dealer registered with the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission if the broker-dealer is acting within the scope of the applicable federal securities or commodity futures laws and regulations; or

(viii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act ("Fair Credit Reporting Act"), approved October 26, 1970 (84 Stat. 1128; 15 U.S.C. sec. 1681-1681t).

(3) "Extension of credit" means the right to defer payment of a debt or to incur a debt and defer payment of the debt as offered or granted primarily for personal, family, or household purposes.

(4) "Person" means any individual, corporation, firm, agency, company, joint venture, association, organization, partnership, society, or joint stock company. (Mar. 8, 1991, D.C. Law 8-236, § 2, 38 DCR 306.)

Legislative history of Law 8-236. — Law 8-236, the "Consumer Credit Service Organizations Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-70, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-319 and transmitted to both Houses of Congress for is review.

References in text. — "This act", referred to in the introductory language, is D.C. Law 8-236.

The "Federal Savings and Loan Insurance Corporation", referred to in (2)(D)(ii), has been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

Delegation of Authority under D.C. Law 8-236, the Consumer Credit Service Organizations Amendment Act of 1990. — See Mayor's Order 93-120, August 18, 1993.

§ 28-4602. Registration statement.

(a) A consumer credit service organization that operates in the District shall:

(1) Register with the Mayor; and

(2) On a form prescribed by the Mayor, file a registration statement with the Mayor.

(b) If there is a change in any of the information provided in the registration statement, the registrant shall report the change in writing to the Mayor within 10 days of the change.

(c) If, in the opinion of the Mayor, the registration statement fails to disclose sufficient information required by this act [this chapter] or the rules issued pursuant to this act [this chapter], the registrant shall file in writing any additional information requested by the Mayor. The Mayor shall not accept the registration statement until all the requested information is furnished. (Mar. 8, 1991, D.C. Law 8-236, § 3, 38 DCR 306.)

Section references. — This section is referred to in § 28-4606.

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in the first sentence of (c), is D.C. Law 8-236.

Editor's notes. — The bracketed language was inserted in the first sentence of (c) to correct errors in D.C. Law 8-236.

§ 28-4603. Prohibited acts.

A consumer credit service organization shall not:

(1) Charge or receive money or other valuable consideration prior to completion of the services the consumer credit service organization has agreed to perform for a consumer, unless the consumer credit service organization has obtained a surety bond or established a trust account as required by section 5 [§ 28-4604];

(2) Charge or receive money or other valuable consideration solely for referral of a consumer to a retail seller who may extend credit to the consumer if the credit that is to be extended to the consumer is based upon substantially the same terms as credit available to the general public;

(3) Make any statement or counsel or advise a consumer to make any statement regarding the consumer's creditworthiness, credit standing, or credit capacity that the consumer credit service organization knows or reasonably should have known is false or misleading to the following:

(A) A credit reporting agency;

(B) A person who has extended credit to a consumer; or

(C) A person to whom a consumer is applying for an extension of credit;

(4) In connection with the offer or sale of the services:

(A) Make or use a false or misleading representation;

(B) Fail to disclose a material fact, policy, or method; or

(C) Directly or indirectly engage in an act or course of business to defraud or deceive a consumer;

(5) Make or use as a part of its trade name, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the word "repair" in a manner that reasonably conveys the impression or belief that the organization is able to provide a consumer with an immediate correction or rehabilitation of the consumer's credit problem;

(6) Attempt to waive any provision of this act [this chapter] or coerce, influence, or direct a consumer to waive any provision of this act [this chapter] or any rule issued pursuant to this act [this chapter]; or

(7) Fail or refuse to comply with any provision of this act [this chapter] or any rule issued pursuant to this act [this chapter]. (Mar. 8, 1991, D.C. Law 8-236, § 4, 38 DCR 306.)

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to two places each in (a)(6) and (a)(7), is D.C. Law 8-236.

Editor's notes. — The bracketed material was inserted in (1) to translate a reference and was inserted in (6) and (7) to correct errors in D.C. Law 8-236.

§ 28-4604. Bond requirements.

(a) A consumer credit service organization that charges or receives money or other valuable consideration prior to completion of services under a contract or agreement shall obtain a surety bond or establish a trust account that guarantees a refund to a consumer of any money or other valuable consideration paid by the consumer. The bond shall be in the amount of $25,000 and issued by a surety company legally allowed to do business in the District. A trust account established to guarantee a refund to a consumer shall have a minimum balance of $25,000 and be deposited at a federally insured bank or savings and loan association located in the District.

(b) Funds from the bank account or surety bond shall be used to refund payment to a consumer who cancels a contract, to pay any damages assessed against a consumer credit service organization in an action arising from a violation of this act [this chapter], or to settle a consumer complaint filed with the Mayor against a consumer credit service organization. (Mar. 8, 1991, D.C. Law 8-236, § 5, 38 DCR 306.)

Section references. — This section is referred to in § 28-4603.

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in (b), is D.C. Law 8-236.

Editor's notes. — The bracketed material was inserted in (b) to correct an error in D.C. Law 8-236.

§ 28-4605. Disclosure; written agreement required.

(a) Prior to the execution of a contract or agreement between a consumer and a consumer credit service organization or prior to the receipt by the consumer credit service organization of any money or other valuable consideration, whichever occurs first, the consumer credit service organization shall provide the consumer with a statement that contains the information required pursuant to subsection (b) of this section. The consumer credit service organization shall maintain for 3 years a copy of the statement signed by the consumer acknowledging receipt of the statement required by subsection (b) of this section.

(b) The information statement shall include the following:

(1) A complete and accurate statement of a consumer's right to review any file relating to the consumer that is maintained by the consumer credit reporting agency, as provided under the Fair Credit Reporting Act (15 U.S.C. 1681-1681t);

(2) A statement that a consumer may review his or her consumer credit reporting agency's file at no charge if a request is made to the consumer credit reporting agency within 30 days after receiving notice that credit has been denied;

(3) The approximate amount that the consumer credit service organization will charge a consumer to review his or her consumer credit reporting agency's file if a request has not been made within 30 days after receiving notice that credit has been denied;

(4) A statement of a consumer's right to dispute the completeness or accuracy of any information contained in any file on the consumer maintained by a consumer credit service organization as allowed by applicable District or federal law;

(5) A complete and detailed description of the services to be performed by the consumer credit service organization for a consumer and the total amount the consumer will be charged for the services;

(6) A statement that asserts a consumer's right to recover under a bond or trust account established pursuant to this act [this chapter];

(7)(A) The name and address of the trust account depository and the trustee and the account number of the trust account; or

(B) The name and address of the surety company that issued the bond and the account number and date of the surety bond; and

(8) A statement that asserts a consumer's right to file a dispute directly with the consumer credit reporting agency in accordance with the provisions of the Fair Credit Reporting Act.

(c) Any contract between a consumer and the consumer credit service organization for the purchase of the services of the consumer credit service organization shall be in writing, dated, signed by the consumer, and include the following:

(1) The terms and conditions of payment, including the total of all the payments to be made by the consumer, regardless of whether the payments are to be made to the consumer credit service organization or to another person;

(2) A full and detailed description of the services to be performed by the consumer credit service organization for the consumer, including:

(A) A statement concerning the specific detrimental information with respect to a consumer's credit that the credit service organization proposes to remedy;

(B) Any guarantee or promise of full or partial refund; and

(C) The estimated completion date or estimated length of time necessary for completion of the services; and

(3) The address of the consumer credit service organization's principal place of business and the name and address of the organization's registered agent authorized to receive service of process.

(d) The contract shall be accompanied by a notice of cancellation that shall include the following:

(1) Notice of a consumer's right to cancel a contract within 5 calendar days of signing the contract;

(2) A provision that states that a consumer may cancel by personally delivering a copy of a signed and dated cancellation notice or by sending a notice of a cancellation by certified mail, return receipt requested, to the consumer credit service organization; and

(3) A provision that a consumer is entitled to receive a reimbursement within 10 days of receipt of the cancellation notice.

(e) The consumer credit service organization shall provide a consumer with a copy of the information statement, contract, disclosure statement, notice of cancellation, and any other document required by this act [this chapter] or the

rules issued pursuant to this act [this chapter]. (Mar. 8, 1991, D.C. Law 8-236, § 6, 38 DCR 306.)

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in (b)(6) and (e), is D.C. Law 8-236.

Editor's notes. — The bracketed material has been inserted in (b)(6) and (e) to correct errors in D.C. Law 8-236.

§ 28-4606. Enforcement.

(a) Except as provided in this act [this chapter], no registration pursuant to section 3 [§ 28-4602] shall be suspended or revoked without a hearing pursuant to title 1 of the District of Columbia Administrative Procedure Act ("APA"), approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 *et seq.*).

(b) In any proceeding pursuant to this act [this chapter], the burden of proving an exemption or exception is upon the person who claims the exemption or exception.

(c) This section does not prohibit the enforcement by any person of a right provided by this act [this chapter] or any other applicable District or federal law, rule, or regulation. (Mar. 8, 1991, D.C. Law 8-236, § 7, 38 DCR 306.)

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in (a), (b) and (c), is D.C. Law 8-236.

Editor's notes. — The bracketed material has been inserted in (a), (b) and (c) to correct errors in D.C. Law 8-236.

§ 28-4607. Penalties.

(a) Any person who violates any provision of this act [this chapter] shall be fined not more than $500 per violation, imprisoned for not more than 1 year, or both.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act [this chapter] or the rules authorized by this act [this chapter], pursuant to titles I-II of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code, sec. 6-2701 *et seq.*) [subchapters I and II of Chapter 27 of Title 6].

(c) Any consumer injured by a violation of this act [this chapter] may bring an action for recovery of damages within 3 years after the signing of the contract. Judgment shall be entered for actual damages and shall in no case be less than the amount paid by the consumer to the consumer credit service organization, plus reasonable attorney's fees and actual costs incurred to recover the damages. An award may also be entered for punitive damages.

(d) The remedies provided pursuant to this act [this chapter] are in addition to the remedies available pursuant to any other law. (Mar. 8, 1991, D.C. Law 8-236, § 8, 38 DCR 306.)

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in (a), two places in (b), the first sentence of (c), and in (d), is D.C. Law 8-236.

Editor's notes. — The bracketed material has been inserted in (a), (b), the first sentence of (c), and in (d) to correct errors in D.C. Law 8-236.

§ 28-4608. Rulemaking.

(a) The Mayor shall issue proposed rules, pursuant to Title 1 of the District of Columbia Administrative Procedure Act ("APA"), approved October 21, 1968 (82 Stat. 1204; sections 1-1501 *et seq.*) [subchapter I of Chapter 15 of Title 1], to implement the provisions of this act [this chapter]. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by title 1 of the APA (sections 1-1501 *et seq.*) [subchapter I of Chapter 15 of Title 1].

(b) The proposed rules shall include, but not be limited to the following:

(1) Registration requirements;

(2) Sample disclosure provisions;

(3) Contract and notice of cancellation forms;

(4) A schedule of civil fines.

(c) The Mayor may issue emergency rules without prior Council approval, which shall be effective for not more than 90 days and are consistent with the APA. (Mar. 8, 1991, D.C. Law 8-236, § 10, 38 DCR 306.)

Legislative history of Law 8-236. — See note to § 28-4601.

References in text. — "This act", referred to in the first sentence of (a), is D.C. Law 8-236.

Editor's notes. — The bracketed material was inserted in the first sentence of (a) to correct errors in D.C. Law 8-236.

TITLE 29. CORPORATIONS.

Chapter
1. General Provisions..... §§ 29-101 to 29-105.
2. Business Corporations (1901)..... §§ 29-201 to 29-240.
3. Business Corporations (1954)..... §§ 29-301 to 29-399.69.
4. Dissolution..... §§ 29-401 to 29-429.
5. Nonprofit Corporations..... §§ 29-501 to 29-599.16.
6. Professional Corporations..... §§ 29-601 to 29-621.
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8. Institutions of Learning..... §§ 29-801 to 29-820.
9. Religious Societies..... §§ 29-901 to 29-916.
10. Charitable, Educational, and Religious Associations.... §§ 29-1001 to 29-1006.
11. Cooperative Associations..... §§ 29-1101 to 29-1148.
12. Franchising..... §§ 29-1201 to 29-1208.
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Chapter 1. General Provisions.

Sec.
29-101. Reorganization of corporations existing prior to January 1, 1902.
29-102. Notice of application for, alteration to, or extension of charter or special privileges.
29-103. Change of name of corporation.
29-104. Requirement for recordation of certificate of incorporation.
29-105. Semiannual publication of certain foreign corporations required.

§ 29-101. Reorganization of corporations existing prior to January 1, 1902.

(a) Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, may come under and avail itself of the provisions of this chapter by giving to its stockholders, members, or associates notice as prescribed in § 29-231 and pursuing the same procedure and complying with the same requirements as are prescribed in Chapter 2 of this title and §§ 26-402, 29-103, and 44-101 to 44-103 in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this chapter.

(b) Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, which has not availed itself of the provisions of Chapter 2 of this title, or Chapter 3 of this title, shall be required to maintain a registered office in the District of Columbia, appoint a registered agent, and file annual reports with the Mayor of the District of Columbia. With respect to the maintenance of a registered office in the District of Columbia and the appointment of a registered agent, each corporation shall be required to comply with and shall be subject to the provisions of §§ 29-310, 29-311, 29-312,

and 29-399.30. With respect to the filing of annual reports with the Mayor of the District of Columbia, each corporation shall be required to comply with and shall be subject to the provisions of § 29-398 and §§ 29-399.23 through 29-399.29. Each corporation shall also be required to pay the fees and charges imposed by § 29-399.22 and if the corporation fails to make the payments it shall be subject to the penalties set forth in § 29-399.31. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 766; 1973 Ed., § 29-101; Sept. 10, 1992, D.C. Law 9-144, § 2, 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-238, 29-239, and 29-240.

Legislative history of Law 9-144. — Law 9-144, the "District of Columbia Corporation Law Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-64, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-224 and transmitted to both Houses of Congress for its review. D.C. Law 9-144 became effective on September 10, 1992.

Application of § 2 of Law 9-144. — Section 6(a) of D.C. Law 9-144 provided that § 2 shall apply on the first day of the sixth month following September 10, 1992.

Editor's notes. — The reference in (a) to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-102. Notice of application for, alteration to, or extension of charter or special privileges.

Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the District of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for 4 successive weeks, in a newspaper published in the District of Columbia, the last of said publications to be made at least 14 days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the Council of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 767; 1973 Ed., § 29-102.)

Section references. — This section is referred to in §§ 29-238, 29-239, and 29-240.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(228) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-103. Change of name of corporation.

Any corporation organized under the laws of the District of Columbia may change its name in the manner following:

(1) The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the bylaws provide, and in the absence of such provision upon 10 days notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least 10 days prior to such meeting to be considered sufficient notice under this section. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the Recorder of Deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this section shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

(2) A certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the Recorder of Deeds shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name; and no fees shall be required by the Recorder of Deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

(3) A corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

(4) Upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation whose name has been changed as hereinabove provided, once each week for 4 consecutive weeks, in 2 daily papers published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639a; Mar. 1, 1921, 41 Stat. 1194, ch. 94; 1973 Ed., § 29-103.)

Section references. — This section is referred to in § 29-101.

§ 29-104. Requirement for recordation of certificate of incorporation.

The Recorder of Deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10% of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the

first board of trustees. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; 1973 Ed., § 29-104.)

Cross references. — As to requirement that payment for capital stock be in money or in property at its actual value, see § 29-209.

§ 29-105. Semiannual publication of certain foreign corporations required.

(a) Except as otherwise provided in §§ 26-101, 29-213, and 35-103, any insurance company, building association or company, banking company, savings institution, or other company or association advertising for or receiving premiums, deposits, or dues for membership, incorporated under the laws of any other state, territory, or foreign government, and transacting business within the District of Columbia, shall publish in at least 2 general circulation newspapers, published in the District, once every 2 weeks or more frequently semiannually, during the months of March and September of each year, a full statement, under oath, showing its capital stock and the amount paid in on account of the same, assets, liabilities, debts, deposits, dividends and dues, as well as its current expenses during 6 months ending January and July preceding.

(b) Any such company, association, or institution failing to publish statements as required by this section shall forfeit its right to do business in said District, and thereupon it shall be the duty of the Mayor of the District of Columbia to revoke its license or permit to do business in said District; provided, that fraternal beneficiary associations or societies doing business on the lodge plan and paying death benefits be exempted from the provisions of this section. (July 29, 1892, 27 Stat. 325, ch. 321, §§ 1, 2; 1973 Ed., § 29-105; Mar. 16, 1982, D.C. Law 4-81, § 2, 29 DCR 156.)

Legislative history of Law 4-81. — Law 4-81, the "Newspaper Publication Act of 1981," was introduced in Council and assigned Bill No. 4-323, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-135 and transmitted to both Houses of Congress for its review.

References in text. — Section 35-103, referred to in (a), was repealed October 21, 1993 by D.C. Law 10-42, § 7(a).

Application of Law 4-81. — Section 7 of D.C. Law 4-81 provided that it shall apply to any requirement that the District of Columbia publish notices on or after January 1, 1982.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) tranferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 2. BUSINESS CORPORATIONS (1901).

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§ 29-201. Formation — Number of incorporators; dealing in real estate.

Any 3 or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the Recorder of Deeds, a certificate in writing; provided, that nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real

estate agents or brokers. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 605; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 29-201.)

Cross references. — As to formation of building and homestead associations, see § 26-501.

As to formation of insurance corporations, see Title 35.

Formation of corporations prohibited. — Section 146 of Act of June 8, 1954, 68 Stat. 179, provided that no corporation eligible to be formed under Chapter 3 of this title could be incorporated under any other statute after 180 days after June 8, 1954.

This section does not authorize the combination of all classes of industrial business by 1 corporation. Dancy v. Clark, 24 App. D.C. 487 (1905).

Foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Hight v. Richmond Park Imp. Co., 47 App. D.C. 518 (1918).

Incorporation of business and benevolent corporations. — The general incorporation statutes provide for the incorporation of both business corporations and benevolent corporations. White v. Central Dispensary & Emergency Hosp., 99 F.2d 355 (D.C. Cir. 1938).

Holding real estate. — No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it. Groo v. Norman & Robinson, 42 App. D.C. 387 (1914).

Cited in Emergency Fleet Corp. v. Western Union Tel. Co., 275 U.S. 415, 48 S. Ct. 198, 72 L. Ed. 345 (1928); Murphy v. Washington Am. League Base Ball Club, Inc., 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959); District of Columbia v. H.J.B., App. D.C., 359 A.2d 285 (1976); Reiner v. Washington Plate Glass Co., 711 F.2d 414 (D.C. Cir. 1983).

§ 29-202. Same — Contents of certificate.

In such certificate shall be stated:

(1) The corporate name of the company and the object for which it is formed;

(2) The term of its existence, which may be perpetual;

(3) The amount of the capital stock of the company and the number of shares of which said stock shall consist;

(4) The number of trustees who shall manage the concerns of the company for the first year and their names;

(5) The name of the place in the District in which the operations of the company are to be carried on. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 606; 1973 Ed., § 29-202.)

Cross references. — As to amendment of charter, see § 29-238.

Section references. — This section is referred to in §§ 29-203 and 29-234.

Cited in Murphy v. Washington Am. League Base Ball Club, Inc., 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959).

§ 29-203. Same — Name; powers; restrictions on mortgages.

When the certificate shall have been filed, in accordance with the provisions of § 29-202, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the names stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by their corporate name be capable in law of

purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 607; 1973 Ed., § 29-203.)

§ 29-204. Trustees — Duties; qualifications; annual election.

The stock, property, and concerns of such company shall be managed by not less than 3 trustees, who shall be stockholders, and shall, except for the 1st year, be annually elected by the stockholders, at such time and place as shall be determined by the bylaws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 608; July 13, 1959, 73 Stat. 181, Pub. L. 86-83; Apr. 22, 1960, 74 Stat. 78, Pub. L. 86-436; 1973 Ed., § 29-204.)

Corporate acts and intentions. — A corporation can only act through its agents, directors, or trustees, and its intention can only be learned by the language of its recorded acts. Fox v. Johnson & Wimsatt, 31 F. Supp. 64 (D.D.C. 1940), aff'd, 127 F.2d 729 (D.C. Cir. 1942).

Trustees must at all times be stockholders. Dancy v. Clark, 24 App. D.C. 487 (1905).

Cited in Tryson v. Southern Realty Corp., 274 F. 135 (D.C. Cir. 1921).

§ 29-205. Same — Procedure for election; vacancies.

Public notice of the time and place of holding such election shall be published not less than 30 days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the bylaws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 609; 1973 Ed., § 29-205.)

§ 29-206. Same — Effect of failure to hold election of trustees at designated time.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the bylaws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the bylaws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 610; 1973 Ed., § 29-206.)

§ 29-207. Officers.

There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as the company by its bylaws may require. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 611; 1973 Ed., § 29-207.)

Cross references. — As to quo warranto proceedings questioning right to corporate office, see §§ 16-3521 to 16-3523.

§ 29-208. Bylaws.

The trustees shall have power to make such prudential bylaws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 612; 1973 Ed., § 29-208.)

§ 29-209. Stock — Amount to be paid in before commencing business; calls for residue of subscription; failure to make payments.

No company incorporated under this chapter and §§ 26-402 and 44-101 to 44-103 shall be authorized to transact any business until 10% of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within 60 days after a personal demand or a notice requiring such payment shall have been published for 6 successive weeks in a newspaper in the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 613; 1973 Ed., § 29-209.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-210. Same — Deemed personal property; transferability.

The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 614; 1973 Ed., § 29-210.)

Section references. — This section is referred to in § 29-225.

Cited in Peoples Nat'l Bank v. Saville, 25 App. D.C. 139 (1905), appeal dismissed, 201 U.S. 641, 26 S. Ct. 760, 50 L. Ed. 901 (1906).

§ 29-211. Liability of stockholders.

All the stockholders of every company incorporated under this chapter and §§ 26-402 and 44-101 to 44-103 shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in § 29-212. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 615; 1973 Ed., § 29-211.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

Judgment creditor of corporation is entitled to have the corporate veil pierced where the corporation has no independent existence, but is used as a personal instrumentality. Harris v. Wagshal, App. D.C., 343 A.2d 283 (1975).

Suit to recover unpaid stock subscriptions. — Subscribers to stock must be sued severally to recover unpaid subscriptions. Peoples Nat'l Bank v. Saville, 25 App. D.C. 139 (1905), appeal dismissed, 201 U.S. 641, 26 S. Ct. 760, 50 L. Ed. 901 (1906).

Cited in Royal Glue Co. v. Lange, 40 App. D.C. 9 (1913); Capitol Dress Mfg. Co. v. Moran, 84 F.2d 253 (D.C. Cir. 1936).

§ 29-212. Certificate of capital stock paid in.

The president and a majority of the trustees, within 30 days after the payment of the last installment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the said 30 days record the same in the office of the Recorder of Deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 616; 1973 Ed., § 29-212.)

Cross references. — As to prerequisites required before Recorder of Deeds may record certificate, see § 29-104.

Section references. — This section is referred to in § 29-211.

§ 29-213. Annual report — Filing; fees; and penalties.

Every company shall be required to file an annual report with the Mayor of the District of Columbia. In fulfilling this obligation, each company shall be required to comply with the provisions of §§ 29-398 and 29-399.23 through 29-399.29. Each company shall also be required to pay the fees and charges imposed by § 29-399.22 and if the corporation fails to make the payment, it shall be subject to the penalties set forth in § 29-399.31. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 617; 1973 Ed., § 29-213; Sept. 10, 1992, D.C. Law 9-144, § 3(a), 39 DCR 4863.)

Section references. — This section is referred to in § 29-105.

Legislative history of Law 9-144. — Law 9-144, the "District of Columbia Corporation

Law Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-64, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-224 and transmitted to both Houses of Congress for its review. D.C. Law 9-144 became effective on September 10, 1992.

Application of § 3(a) of Law 9-144. — Section 6(a) of D.C. Law 9-144 provided that § 3(a) shall apply on the first day of the sixth month following September 10, 1992.

§ 29-214. Registered office and registered agent.

Every company shall be required to maintain a registered office in the District of Columbia and appoint a registered agent. In fulfilling these obligations, each company shall be required to comply with the provisions of §§ 29-310 through 29-312, and § 29-399.30. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 618; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 29-214; Sept. 10, 1992, D.C. Law 9-144, § 3(b), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-213.

Application of § 3(b) of Law 9-144. — Section 6(a) of D.C. Law 9-144 provided that § 3(b) shall apply on the first day of the sixth month following September 10, 1992.

§ 29-215. Same — Liability of officers for false certificate or report.

If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this chapter and §§ 26-402 and 44-101 to 44-103 shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 619; 1973 Ed., § 29-215.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-216. Purchase of stock of other corporations unlawful.

It shall not be lawful for any corporation, except a charitable, educational, or religious corporation incorporated under the laws of the District of Columbia or under any act of Congress, to use its funds to purchase stock in any other corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 620; Mar. 14, 1952, 66 Stat. 24, ch. 103, § 1; 1973 Ed., § 29-216.)

Cited in Washington Gas Light Co. v. Dann, 70 F.2d 746 (D.C. Cir.), cert. denied, 292 U.S. 649, 54 S. Ct. 859, 78 L. Ed. 1499 (1934); Dunn v. O'Connor, 89 F.2d 820 (D.C. Cir. 1937).

§ 29-217. Loans secured by corporation's own stock prohibited; release of borrower.

No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor; provided, that nothing herein contained shall be held to release the borrower in such a case from liability to the corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 621; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 29-217.)

§ 29-218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased — Trustees personally liable for debts.

If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectively remain in office. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 622; 1973 Ed., § 29-218.)

Section references. — This section is referred to in § 29-219.

Cited in Askew v. Randolph Carney Co., App. D.C., 128 A.2d 788 (1957).

§ 29-219. Same — Exemption from liability for objecting trustees.

If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the Recorder of Deeds of the District, they shall be exempt from the liability prescribed in § 29-218. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 623; 1973 Ed., § 29-219.)

§ 29-220. Executor, administrator, guardian, or trustee — No personal liability as stockholder.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 624; 1973 Ed., § 29-220.)

§ 29-221. Same — Right to vote.

Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 625; 1973 Ed., § 29-221.)

§ 29-222. Pledges of stock; no personal liability; right to vote.

No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 626; 1973 Ed., § 29-222.)

§ 29-223. Stock book — To be kept by treasurer or secretary; contents.

It shall be the duty of the trustees of every corporation formed under this chapter and §§ 26-402 and 44-101 to 44-103 to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within 6 years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 627; 1973 Ed., § 29-223.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

This section does not apply to corporations not formed under this chapter. Morgan v. Howard, 293 F. 650 (D.C. Cir. 1923).

§ 29-224. Same — Inspection.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 628; 1973 Ed., § 29-224.)

Section references. — This section is referred to in § 29-228.

Cited in Morgan v. Howard, 293 F. 650 (D.C. Cir. 1923).

§ 29-225. Same — Effect of records.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of § 29-210. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 629; 1973 Ed., § 29-225.)

Intent of requirement of transfer on corporate books. — The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. National Safe Deposit, Sav. & Trust Co. v. Hibbs, 32 App. D.C. 459 (1909), aff'd, 229 U.S. 391, 33 S. Ct. 818, 57 L. Ed. 1241 (1913).

§ 29-226. Same — Presumptive evidence of facts stated therein.

Such books shall be presumptive evidence of the fact therein stated in favor of the plaintiff in any suit or proceeding against such company or against any 1 or more stockholders. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 630; 1973 Ed., § 25-226.)

§ 29-227. Same — Failure to make entries or to allow inspections of books.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of $50 for any such neglect or refusal, and all damages resulting therefrom. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 631; 1973 Ed., § 29-227; Oct. 5, 1985, D.C. Law 6-42, § 470(b), 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-228. Same — Liability for neglect to keep open for inspection.

Every company that shall neglect to keep such book open for inspection, as provided in § 29-224, shall forfeit to the District of Columbia the sum of $50 for every day it shall so neglect, to be sued for and recovered in the Superior Court of the District of Columbia. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(c)(1)(F), 169(1); 1973 Ed., § 29-228; Oct. 5, 1985, D.C. Law 6-42, § 470(c), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-227.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-229. Increase or diminution of stock — Extension of business.

Any company which may be formed under this chapter and §§ 26-402 and 44-101 to 44-103 may increase or diminish its capital stock, by complying with the provisions of this chapter, and §§ 26-402 and 44-101 to 44-103, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this chapter and §§ 26-402 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 633; 1973 Ed., § 29-229.)

Editor's notes. — The references to §§ 44-101 to 44-103 are no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-230. Diminution of capital stock when debts exceed proposed capital.

Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 634; 1973 Ed., § 29-230.)

§ 29-231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business — Notice to stockholders.

Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least 3 successive weeks, and to deposit a notice thereof in the post office addressed to each stockholder at his usual place of residence, at least 3 weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 635; 1973 Ed., § 29-231.)

Section references. — This section is referred to in §§ 29-101, 29-232, and 29-240.

Extension of business is the taking in of something cognate. Dancy v. Clark, 24 App. D.C. 487 (1905).

§ 29-232. Same — Quorum.

If, at any time and place specified in the notice provided for in § 29-231, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 636; 1973 Ed., § 29-232.)

§ 29-233. Same — Certificate by chairman.

If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this chapter and §§ 26-402 and 44-101 to 44-103, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 637; 1973 Ed., § 29-233.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-234. Same — Filing of certificate.

Such certificate shall be acknowledged by the chairman, and filed as required by § 29-202, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this

chapter and §§ 26-402 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 638; 1973 Ed., § 29-234.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-235. Same — Vote required for approval.

A vote of at least two-thirds of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 639; 1973 Ed., § 29-235.)

§ 29-236. Certified copy of certificate of incorporation to be presumptive evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter and §§ 26-402 and 44-101 to 44-103, certified by the Recorder of Deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 640; 1973 Ed., § 29-236.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.

Any company formed prior to January 1, 1902, agreeably by law, for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the Recorder of Deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641; 1973 Ed., § 29-237.)

Effect of filing certificate. — The filing of the certificate under this section merely extends indefinitely the life of the company, without affecting the scope of its powers and duties. Morgan v. Howard, 293 F. 650 (D.C. Cir. 1923).

§ 29-238. Amendment of charter; procedure.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and §§ 26-402 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and §§ 26-402 and 44-101 to 44-103 pursuant to §§ 29-101 and 29-102, may, by pursuing the same procedure and complying with the same requirements as are prescribed in this chapter and §§ 26-402 and 44-101 to 44-103 in respect to the increase or diminution of capital stock, amend its charter so as to accomplish any 1 or more of the following objects:

(1) The addition to or diminution of the corporate purposes and powers, or the substitution of other purposes and powers in whole or in part for those set forth in the charter;

(2) The changing of the corporate business;

(3) The changing of the location of the place in the District of Columbia in which the operations of the corporation are to be carried on; and

(4) The making of any other amendment or amendments, not otherwise provided for under this chapter and §§ 26-402 and 44-101 to 44-103, of the charter that may be desired; provided such amendment or amendments shall contain only such provisions as it would be lawful or proper to insert in an original certificate of incorporation made at the time of making such amendment or amendments. (Mar. 3, 1901, ch. 854, § 639b; Feb. 12, 1931, 46 Stat. 1089, ch. 120; 1973 Ed., § 29-238.)

Editor's notes. — The references to §§ 44-101 to 44-103 appearing in the introductory language and in (4) are no longer applicable, as these are lost luggage provisions as presently codified.

§ 29-239. Stock; classes of preferred and common authorized; restrictions, limitations or preferences to be printed on stock certificate; "charter" defined.

In addition to its common stock every corporation heretofore or hereafter organized or existing under this chapter and §§ 26-402 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and §§ 26-402 and 44-101 to 44-103 pursuant to §§ 29-101 and 29-102, may create 1 or more classes of preferred stock, with such preferences, restrictions, and qualifications not inconsistent with law as shall be expressed in its charter. Such preferred stock shall have such voting powers as are provided in such charter, or it may have no voting power if such charter so provides. Each such corporation may have 1 or more classes of common stock, with or without voting powers, and with such rights, restrictions, and qualifications as shall be expressed in its charter. The term "charter" is hereby defined to include a charter granted by special act, certificate of incorporation, certificate of organization, or certificate of reorganization, either as originally passed or filed or as amended, unless such construction would be inconsistent with the context. Preferred stock of any class may be made subject to redemption at such times and prices as may be determined in such charter. In the case of stock which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount and terms of such preference shall be stated in the charter. All certificates for stock which has no voting powers or is restricted or limited as to its voting powers, or which is preferred or limited as to its dividends, or as to its share of the assets upon dissolution, shall have a statement of such restriction, limitation, or preference plainly stated thereon. (Mar. 3, 1901, ch. 854, § 639c; Feb. 12, 1931, 46 Stat. 1089, ch. 120; 1973 Ed., § 29-239.)

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

Section has no application to corporation organized for profit in 1958. Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d

1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

§ 29-240. Sale, lease or exchange of property or assets as an entirety; approval of stockholders required; rights of dissenting stockholders.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and §§ 26-402 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and §§ 26-402 and 44-101 to 44-103 pursuant to §§ 29-101 and 29-102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of § 29-231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if 2 or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least 5 days before the holding of such meeting, may within 20 days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corporation shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within 30 days after such written demand (but not afterwards, against said vendor, lessor or grantor corporation, in the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, a petition for an accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or

that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancelation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in such court. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in such court. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock; provided, however, that the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to such court that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and such purchasing corporation or person shall thereupon immediately file in the office of the Recorder of Deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of §§ 29-415 to 29-418. Nothing contained herein shall affect the provisions of § 28:6-101 et seq., or any of the provisions of Chapters 1-10 of Title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d; Feb. 12, 1931, 46 Stat. 1089, ch. 120; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(d)(1); 1973 Ed., § 29-240.)

Cross references. — As to court having jurisdiction over civil actions wherein amount in controversy exceeds $50,000, see §§ 11-501 and 11-921.

Editor's notes. — The reference to §§ 44-101 to 44-103 is no longer applicable, as these are lost luggage provisions as presently codified.

Cited in Davis v. Universal Corp., App. D.C., 133 A.2d 479 (1957).

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§ 29-301. Short title.

This chapter shall be known and may be cited as the "District of Columbia Business Corporation Act". This chapter shall be applicable to all corporations incorporated in the District of Columbia on or after June 8, 1954. (June 8, 1954, 68 Stat. 179, ch. 269, § 1; 1973 Ed., § 29-901; Sept. 10, 1992, D.C. Law 9-144, § 4(a), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Cited in Reiner v. Washington Plate Glass Co., 711 F.2d 414 (D.C. Cir. 1983); Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983); Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988).

§ 29-302. Definitions.

As used in and for the purposes of this chapter, unless the context otherwise requires:

(1) "Corporation" or "domestic corporation," except as used in § 29-399.44 means a corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of the District of Columbia and special acts of Congress.

(3) "Articles of incorporation" include the original articles of incorporation and all amendments thereto, and include articles of merger or consolidation.

(4) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(5) "Incorporator" means one of the signers of the original articles of incorporation.

(6) "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

(7) "Shareholder" means one who is a holder of record of shares in a corporation.

(8) "Authorized shares" means the aggregate number of shares of all classes, whether with or without par value, which the corporation is authorized to issue.

(9) "Shares of its own stock" belonging to a corporation shall be deemed to be "issued" shares, but not "outstanding" shares.

(10) "Stated capital" means, at any particular time, the sum of:

(A) The par value of all shares then issued having a par value; and

(B) The consideration received by the corporation for all shares then issued without par value, except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by law; and

(C) Such amounts not included in subparagraphs (A) or (B) of this paragraph as may have been transferred to the stated capital account of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus such formal reductions from said sum as may have been effected in a manner permitted by law.

(11) "Paid-in surplus" means all that part of the consideration received by the corporation for, or on account of, all shares issued which does not constitute stated capital, whether heretofore or hereafter created by:

(A) The receipt by the corporation, for, or on account of, the issuance of shares having a par value of consideration in excess of the par value of such shares; or

(B) The allocation of any part of the consideration received by the corporation for, or on account of, the issuance of shares in a manner permitted by law; or

(C) A reduction of stated capital under this chapter, minus such formal reductions of paid-in surplus as may have been effected in a manner permitted by law.

(12) "Net assets," for the purpose of determining the right of a corporation to purchase its own shares and of determining the right of a corporation to declare and pay dividends and the liabilities of directors therefor, shall not include shares of its own stock belonging to such corporation.

(13) "Registered office" means that office maintained by the corporation, the address of which is on file with the Mayor.

(14) "Insolvent" means that the corporation is unable to pay its debts as they become due in the usual course of its business.

(15) "State" means any state, territory, colony, dependency, or possession of the United States of America, or any foreign country.

(16) "Mayor" means the Mayor of the District of Columbia or the agent or agents designated by him to perform any function vested in the Mayor by this chapter. It shall be the duty of the Recorder of Deeds and of any other officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Mayor pursuant to this chapter.

(17) "District" means the District of Columbia.

(18) "The court," except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000. (June 8, 1954, 68 Stat. 179, ch. 269, § 2; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 5; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(c)(1); 1973 Ed., § 29-902.)

Cross references. — As to court having jurisdiction of civil actions wherein amount in controversy exceeds $50,000, see §§ 11-501 and 11-921.

Section references. — This section is referred to in § 29-1301.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Tauber v. Noble, App. D.C., 172 A.2d 552 (1961); United States v. Coyne, 540 F. Supp. 175 (D.D.C. 1981).

§ 29-303. Authorized purposes for organization of corporation.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or life insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations; provided, that nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (June 8, 1954, 68 Stat. 180, ch. 269, § 3; Sept. 3, 1963, 77 Stat. 137, Pub. L.

88-111, § 1(5); 1973 Ed., § 29-903; Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Legislative history of Law 2-117. — Law 2-117, the "District of Columbia Business Corporation Act of 1978," was introduced in Council and assigned Bill No. 2-216, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 1, 1978, it was assigned Act No. 2-247 and transmitted to both Houses of Congress for its review.

Cited in Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

§ 29-304. General powers.

Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) To sue and be sued, complain and defend, in its corporate name;

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) To lend money to, and otherwise assist, its employees, other than its officers and directors;

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations organized under the laws of the District of Columbia, of foreign corporations, and of associations, partnerships, or individuals;

(8) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income; no corporation formed hereunder shall plead any statutes against usury in any action;

(9) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within and without the District of Columbia and to exercise in any state, territory, district, colony, or possession of the United States, or in any foreign country the powers granted by this chapter, subject to the laws of such state, territory, District, colony, or possession of the United States, or such foreign country;

(11) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(13) To make contributions to charitable organizations, and, in time of war, to transact any lawful business in aid of the United States;

(14) To cease its corporate activities and surrender its corporate franchise;

(15) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; and

(16) To indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any bylaw, agreement, vote of stockholders, or otherwise. (June 8, 1954, 68 Stat. 180, ch. 269, § 4; Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(1); 1973 Ed., § 29-904.)

Cross references. — As to definition of usury, see § 28-3303.

This section applies to an individual guarantor so that the guarantor as well as the corporation, is precluded from interposing usury as a defense to an action upon a promissory note. Caruso v. Hollander, App. D.C., 363 A.2d 297 (1976).

Filing of a certificate of withdrawal by foreign corporation does not change the status previously acquired by a corporation's contracts, so that its complaint for recovery of usurious interest under prior contracts is barred. Indian Lake Estates, Inc. v. Ten Individual Defendants, 350 F.2d 435 (D.C. Cir. 1965), cert. denied, 383 U.S. 947, 86 S. Ct. 1199, 16 L. Ed. 2d 209 (1966).

Cited in Murphy v. Washington Am. League Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959); Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970); J.H. Marshall & Assocs. v. Burleson, 313 A.2d 587 (1973); Kelly Adjustment Co. v. Boyd, App. D.C., 342 A.2d 361 (1975); Sartori v. Society of Am. Military Eng'rs, App. D.C., 499 A.2d 883 (1985).

§ 29-305. Power of corporation to acquire its own shares.

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares; provided, that it shall not purchase, either directly or indirectly, its own shares when its net assets are less than the sum of its stated capital, its paid-in surplus, any surplus arising from unrealized appreciation in value or revaluation of its assets and any surplus arising from surrender to the corporation of any of its shares, or when by so doing its net assets would be reduced below such sum. Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(1) Eliminating fractional shares;

(2) Collecting or compromising claims of the corporation or any indebtedness to the corporation;

(3) Paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter; or

(4) Effecting the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price, but no redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution. (June 8, 1954, 68 Stat. 181, ch. 269, § 5; 1973 Ed., § 29-904a.)

Policies underlying prohibition against sale of stock for promissory notes embrace interests beyond the protection of the stated capital account so that ban applies to treasury stock as well as newly issued stock and ban includes sale for third party promissory notes, making such sale illegal and voidable. Public Inv., Ltd. v. Bandeirante Corp., 740 F.2d 1222 (D.C. Cir. 1984).

Cited in Reiner v. Washington Plate Glass Co., 711 F.2d 414 (D.C. Cir. 1983).

§ 29-306. Dealing in real estate as corporate purpose.

A corporation having among its purposes, as set forth in its articles of incorporation, that of acquiring, owning, using, conveying, and otherwise disposing of and dealing in real property or any interest therein, shall have power and authority so to do without limitation. (June 8, 1954, 68 Stat. 182, ch. 269, § 6; 1973 Ed., § 29-904b.)

§ 29-307. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

(3) In a proceeding by the Mayor, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Mayor to enjoin the corporation from the transaction of unauthorized business. (June 8, 1954, 68 Stat. 182, ch. 269, § 7; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 1; 1973 Ed., § 29-905.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Standing to claim ultra vires. — A nonprofit corporation representing persons engaged in the business of selling and servicing air-conditioning equipment is not vested with the right to challenge the capacity of a gas company to enter into a contractual arrangement for gas service on the ground that the contract was ultra vires. Association of Fair Competitive Practices in Air Conditioning, Inc. v. Public Serv. Comm'n, 372 F.2d 934 (D.C. Cir. 1967).

§ 29-308. Corporate name.

The corporate name:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of 1 of such words;

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than 1 or more of the purposes contained in its articles of incorporation;

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter; and

(4) Shall not indicate, nor shall any statement be made, that the corporation is organized under an act of Congress. (June 8, 1954, 68 Stat. 183, ch. 269, § 8; 1973 Ed., § 29-906.)

Evidence of corporate status. — Use of the term "Ltd." in company correspondence and on its checks is evidence of its corporate status. Ridgewells Caterer, Inc. v. Nelson, 688 F. Supp. 760 (D.D.C. 1988).

Disclosure of agency relationship. — An agent is not personally liable on a contract it executes on behalf of a principal which discloses the agency relationship; the requirement of disclosure is satisfied if, at the time of the

transaction, the other party had notice that the agent is acting for a principal and was aware of the principal's identity. Aeroflot Russian Int'l Airlines v. O'Brien, 824 F. Supp. 4 (D.D.C. 1993).

§ 29-309. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this chapter or any act for the organization of a corporation under the laws of the District of Columbia;

(2) Any corporation organized under this chapter proposing to change its name;

(3) Any corporation organized under any law other than this chapter proposing to reincorporate or incorporate under this chapter;

(4) Any foreign corporation intending to make application for a certificate of authority to transact business in the District of Columbia;

(5) Any foreign corporation authorized to transact business in the District of Columbia and intending to change its name; or

(6) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in the District of Columbia.

(b) The reservation shall be made by filing with the Mayor an application to reserve a specified corporate name, executed by the applicant. If the Mayor finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 60 days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing with the Mayor a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (June 8, 1954, 68 Stat. 183, ch. 269, § 9; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 2; 1973 Ed., § 29-906a.)

Section references. — This section is referred to in § 41-402.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-310. Registered office and registered agent required.

Each corporation shall have and continuously maintain in the District of Columbia:

(1) A registered office which may be, but need not be, the same as its place of business; and

(2) A registered agent, which agent may be either an individual resident of the District of Columbia or a corporation authorized by the articles of incorporation to act as agent and authorized to transact business in the District of Columbia having a business office identical with the registered office. An individual or corporation shall not be named by a corporation as its registered agent without the individual's or corporation's consent. This consent shall be evidenced by either a written document executed by the registered agent or by a certificate of incorporator certifying that the registered agent has consented. Originals of the written consent or certificate shall be filed with the Mayor. (June 8, 1954, 68 Stat. 183, ch. 269, § 10; 1973 Ed., § 29-907; Sept. 10, 1992, D.C. Law 9-144, § 4(b), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-101 and 29-214.

Legislative history of Law 9-144. — See note to § 29-358.1.

Legislative intent. — Congress intended only that the registered office and registered agent remain in the District and did not require that they be at the place of business, which would imply, so far as events after organization are concerned, that the place of business might be elsewhere than in the District. Murphy v. Washington Am. League Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959).

Cited in Wrecking Corp. of Am. v. Jersey Welding Supply, Inc., App. D.C., 463 A.2d 678 (1983).

§ 29-311. Same — Change.

(a) A corporation may change its registered office or change its registered agent, or both, by filing with the Mayor a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent be changed, the name of its successor registered agent and a statement that the successor registered agent has consented to be named as the corporation's registered agent;

(6) That the address of its registered office and the address of the business office of its registered agent as changed, will be identical; and

(7) That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) The statement shall be executed in duplicate by the corporation, by its president or a vice-president, and delivered to the Mayor. If the Mayor finds that such statement conforms to the provisions of this chapter, the Mayor shall:

(1) Endorse on each of the duplicate originals the word "filed," and the month, day, and year of the filing;

(2) File 1 duplicate original in the Mayor's office; and

(3) Return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Mayor.

(d) Any registered agent of a corporation may resign as the agent upon executing and delivering written notices to the Mayor, the corporation at its registered office, and the corporation at its principal office. The appointment of such an agent shall terminate upon the expiration of 30 days after receipt of the notice by the Mayor or upon the appointment of a successor agent, whichever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

(e) The registered agent of 1 or more domestic corporations may change the address of the registered office of such domestic corporation or corporations by filing with the Mayor a statement setting forth:

(1) The name of the registered agent;

(2) The present address, including street and number, if any, of such registered agent;

(3) The names of the corporation or corporations represented by such registered agent at such address;

(4) The address, including street and number, if any, to which the office of such registered agent is to be changed; and

(5) The date upon which such change will take place.

(f) The statement shall be executed in duplicate by the registered agent in the agent's individual name, but if the agent is a corporation, domestic or foreign, the statement shall be executed by the corporation, by its president or a vice-president, and delivered to the Mayor. If the Mayor finds that the statement conforms to law, the Mayor shall, when all fees and charges have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing;

(2) File one of the duplicate originals in Mayor's office; and

(3) Return the other duplicate original to the registered agent.

(g) The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Mayor or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (June 8, 1954, 68 Stat. 184, ch. 269, § 11; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 3; July 23, 1959, 73 Stat. 239, Pub. L. 86-106, § 1; Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(2); 1973 Ed., § 29-907a; Sept. 10, 1992, D.C. Law 9-144, § 4(c)-(f), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-101 and 29-214.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-312. Registered agent as agent for service; service when no registered agent.

(a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District, or whenever the registered agent cannot with reasonable diligence be found at the registered office of the corporation in the District, or whenever the articles of incorporation of any domestic corporation shall be revoked, the Mayor shall be an agent of the corporation upon whom any process against the corporation may be served and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service on the Mayor of any such process, notice, or demand shall be made by delivering to and leaving with the Mayor, or with any clerk having charge of the Mayor's office, duplicate copies of the process, notice, or demand and a fee of $10. If any process, notice, or demand is so served, the Mayor shall immediately cause 1 of the copies to be forwarded by registered or certified mail to the corporation at its principal office or at its last known address.

(c) The Mayor shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 184, ch. 269, § 12; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(3); 1973 Ed., § 29-907b; Mar. 14, 1984, D.C. Law 5-64, § 2(a), 31 DCR 195; Sept. 10, 1992, D.C. Law 9-144, § 4(g), 39 DCR 4863.)

Cross references. — As to exemption of government agencies from fees levied for Mayor acting as registered agent, see § 29-399.51.

As to requirement that resident agent maintain vacant property in District for nonresident owner, see § 45-1311.

Section references. — This section is referred to in §§ 29-399.51, 29-101, and 29-214.

Legislative history of Law 5-64. — See note to § 29-399.51.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Wrecking Corp. of Am. v. Jersey Welding Supply, Inc., App. D.C., 463 A.2d 678 (1983); Sartori v. Society of Am. Military Eng'rs, App. D.C., 499 A.2d 883 (1985).

§ 29-313. Shares — Power to issue; classes; par value; limitations, restrictions, or qualifications; voting power; preferred or special classes.

(a) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into 1 or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

(b) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) Entitling the holders thereof to cumulative or noncumulative dividends;

(3) Having preference over any other class or classes of shares as to the payment of dividends;

(4) Having preference as to the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; and

(5) Convertible into shares of any other class; provided, that shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted. (June 8, 1954, 68 Stat. 185, ch. 269, § 13; 1973 Ed., § 29-908.)

Cited in Johnson v. E.C. Ernst, Inc., 618 F. Supp. 156 (D.D.C. 1985).

§ 29-314. Same — Issuance of preferred or special classes in series.

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and deter-

mined by the articles of incorporation; provided, that all shares of the same class shall be identical except as to the following relative rights and preferences, in respect of any or all of which there may be variations between different series:

(1) The rate of dividend, the time of payment and the dates from which dividends on cumulative shares shall be accumulative, and the extent of other participation rights, if any;

(2) The price at and the terms and conditions on which shares may be redeemed;

(3) The amount payable upon shares in event of involuntary liquidation;

(4) The amount payable upon shares in event of voluntary liquidation;

(5) Sinking-fund provisions for the redemption or purchase of shares;

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion; and

(7) Any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section, fix and determine the relative rights and preferences of the shares of any series so established; provided, that such authority of the board of directors shall be subject to such further limitations, if any, as are stated in the articles of incorporation and shall always be subject to the limitation that the board of directors shall not create a sinking fund in respect of any series unless provision for a sinking fund at least as beneficial to all issued and outstanding shares of the same class shall either then exist or be at the same time created.

(c) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file with the Mayor a statement setting forth:

(1) The name of the corporation;

(2) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(3) The date of adoption of such resolution; and

(4) That such resolution was duly adopted by the board of directors.

(e) The statement shall be executed in duplicate by the corporation, by its president or a vice-president, and shall be delivered to the Mayor. If the Mayor finds that the statement conforms to law, the Mayor shall, when all franchise taxes, fees, and charges have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "filed," and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Return the other duplicate original to the corporation or its representative.

(f) Upon the filing of such statement by the Mayor, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective. (June 8, 1954, 68 Stat. 185, ch. 269, § 14; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 4; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 2; 1973 Ed., § 29-908a; Sept. 10, 1992, D.C. Law 9-144, § 4(h), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-315. Same — Subscriptions; irrevocability; payment.

(a) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(b) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of the shares, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. Such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with the postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal

representative. (June 8, 1954, 68 Stat. 186, ch. 269, § 15; 1973 Ed., § 29-908b.)

§ 29-316. Same — Consideration for issuance.

(a) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(b) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

(c) Shares of a corporation issued and thereafter acquired by it may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(e) In the event of an exchange of issued shares having a par value for a different number of shares having the same aggregate par value, whether of the same or of a different class or classes, or in the event of a conversion of shares, or in the event of an exchange of shares with or without par value into the same or a different number of shares without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange shall be deemed to be:

(1) The consideration originally received for the shares so exchanged or converted; and

(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and

(3) Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted. (June 8, 1954, 68 Stat. 187, ch. 269, § 16; 1973 Ed., § 29-908c.)

Cited in Public Inv., Ltd. v. Bandeirante Corp., 740 F.2d 1222 (D.C. Cir. 1984); Johnson v. E.C. Ernst, Inc., 618 F. Supp. 156 (D.D.C. 1985).

§ 29-317. Same — Payment; promissory notes and future services excluded.

(a) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued, which, in the case of shares having a par value, shall be not less than the par value thereof, shall have been received by the corporation, such shares shall be deemed to be full paid and nonassessable.

(b) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(c) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. (June 8, 1954, 68 Stat. 187, ch. 269, § 17; 1973 Ed., § 29-908d.)

Policies underlying prohibition against sale of stock for promissory notes embrace interests beyond the protection of the stated capital account so that ban applies to treasury stock as well as newly issued stock and ban includes sale for third party promissory notes, making such sale illegal and voidable. Public Inv., Ltd. v. Bandeirante Corp., 740 F.2d 1222 (D.C. Cir. 1984).

Cited in Johnson v. E.C. Ernst, Inc., 618 F. Supp. 156 (D.D.C. 1985).

§ 29-318. Same — Determination of amount of stated capital.

(a) A corporation may determine that only a part of the consideration for which its shares may be issued, from time to time, shall be stated capital; provided, that in the event of any such determination:

(1) If the shares issued shall consist wholly of shares having a par value, then the stated capital represented by such shares shall be not less than the aggregate par value of the shares so issued;

(2) If the shares issued shall consist wholly of shares without par value, all of which shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be not less than the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(3) If the shares issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus; or

(4) If the shares issued shall consist of several or all of the classes of shares enumerated in paragraphs (1), (2), and (3) of this subsection, then the stated capital represented by such shares shall be not less than the aggregate par value of any shares so issued having a par value and the aggregate preferential amount payable upon any shares so issued without par value having a preferential right in the event of involuntary liquidation.

(b) In order to determine that only a part of the consideration for which shares without par value may be issued from time to time shall be stated capital, the board of directors shall adopt a resolution setting forth the part of such consideration allocated to stated capital and the part otherwise allocated, and expressing such allocation in dollars. If the board of directors shall not have determined: (1) at the time of the issuance of any shares issued for cash; or (2) within 60 days after the issuance of any shares issued for labor or services actually performed for the corporation or issued for property other than cash, that only a part of the consideration for shares so issued shall be stated capital, then the stated capital of the corporation represented by such

shares shall be an amount equal to the aggregate par value of all such shares having a par value, plus the consideration received for all such shares without par value.

(c) The stated capital of the corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the paid-in or other surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. (June 8, 1954, 68 Stat. 188, ch. 269, § 18; 1973 Ed., § 29-908e.)

Cited in Public Inv., Ltd. v. Bandeirante Corp., 740 F.2d 1222 (D.C. Cir. 1984).

§ 29-319. Expenses of organization, reorganization, and financing.

The reasonable charges and expenses of organization or reorganization of a corporation and reasonable compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not full paid and nonassessable. (June 8, 1954, 68 Stat. 188, ch. 269, § 19; 1973 Ed., § 29-908f.)

Cross references. — As to requirement that resident agent maintain vacant property in District for nonresident owner, see § 45-1311.

Section references. — This section is referred to in § 29-363.

§ 29-320. Stock certificates — Representation of shares; signers; restrictions or limitations on transferability and on issuance of shares of more than 1 class; contents.

(a) The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution that some or all classes or series of its stock shall be uncertificated shares. A resolution shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by the president or a vice-president of the corporation. Where a certificate is countersigned by a transfer agent other than the corporation or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice-president of the corporation upon the certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such a certificate shall have ceased to be an officer before the certificate is issued, the certificate may be issued by the corporation with the same effect as if the officer had not ceased to hold the office at the date of its issue. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

(b) Notwithstanding the provisions of § 28:8-204, every certificate representing shares the transferability of which is restricted or limited shall state upon the face that the transferability of the shares is restricted or limited and upon the face or back shall either set forth a full or summary statement of the restriction or limitation upon the transferability of the shares or shall state that the corporation will furnish to any shareholder upon request and without charge the full or summary statement. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner a written notice containing the information required to be set forth or stated on certificates pursuant to this subsection or a statement that the corporation will furnish the information without charge to each shareholder who so requests it.

(c) Subject to the provisions of subsection (b) of this section, every certificate representing shares issued by a corporation which is authorized to issue shares of more than 1 class shall set forth upon the face or back, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special classes in series, the variations in the relative rights and preferences between the shares of each series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner a written notice containing the information required to be set forth or stated on certificates pursuant to this subsection or a statement that the corporation will supply the information without charge to each shareholder who so requests it.

(d) Each certificate representing shares shall also state:

(1) That the corporation is organized under the laws of the District of Columbia;

(2) The name of the person to whom issued;

(3) The number and class of shares which such certificate represents; and

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(e) No certificate shall be issued for any share until such share is fully paid.

(f) As to corporations availing themselves of the provisions of § 29-399.42, the provisions of this section shall be applicable only to the shares of such corporations issued subsequent to such reincorporation or incorporation. (June 8, 1954, 68 Stat. 189, ch. 269, § 20; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 5; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 3; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88-234, § 4; 1973 Ed., § 29-908g; Sept. 10, 1992, D.C. Law 9-144, § 4(i)-(k), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.55, 29-399.60, 29-399.61, and 29-399.62.

Legislative history of Law 9-144. — See note to § 29-358.1.

Design of statement as to restrictions on certificates. — The provision that stock certificates must contain a statement as to restrictions thereon was designed for the protection of innocent purchasers of stock, and could not be used as a defense to a suit by a minority stockholder against those who were parties to a

fraudulent scheme whereby the minority stockholder paid an inflated price for majority stockholder's stock. Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

§ 29-321. Same — Issuance of fractional shares or scrip.

A corporation may, but shall not be obliged to, issue fractions of a share, and, by action of its board of directors, may issue in lieu thereof scrip or other evidences of ownership (either represented by a certificate or uncertificated) which shall entitle the holder to receive a full share upon surrender of scrip or other evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to exercise any voting right, or to receive dividends or to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or other evidence of ownership to be issued subject to the condition that it shall become void if not exchanged for full shares before a specified date, or subject to the condition that the shares for which scrip or other evidence of ownership is exchangeable may be sold by the corporation and the proceeds distributed to the holders of scrip or other evidence of ownership, or subject to any other conditions that the board of directors may deem advisable. (June 8, 1954, 68 Stat. 189, ch. 269, § 21; 1973 Ed., § 29-908h; Sept. 10, 1992, D.C. Law 9-144, § 4(l), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-322. Liability of subscribers and shareholders.

(a) A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(b) No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

(c) Where it cannot be determined that shares which have been issued and outstanding for more than 12 years are fully paid and nonassessable, a determination by the board of directors that the net assets of a corporation applicable to such shares have a fair value at least equal to the stated capital represented by such shares, shall, in the absence of fraud, have the same effect as if such shares had been issued in consideration of such net assets upon such

a determination made at the time of issuance, except that no such determination shall affect any rights of any then existing creditors. (June 8, 1954, 68 Stat. 190, ch. 269, § 22; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 4; 1973 Ed., § 29-908i.)

Piercing the corporate veil. — A judgment creditor of corporation is entitled to have the corporate veil pierced on the basis that the corporation has no independent existence, but is used as a personal instrumentality. Harris v. Wagshal, App. D.C., 343 A.2d 283 (1975).

Cited in Johnson v. E.C. Ernst, Inc., 618 F. Supp. 156 (D.D.C. 1985).

§ 29-323. Limitation of shareholders' rights to acquire additional shares.

(a) The preemptive right of a shareholder to acquire additional shares of a corporation may be limited or denied to the extent provided in the articles of incorporation.

(b) Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its shares to its employees or to the employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be approved by the holders of two-thirds of its shares entitled to vote or by its board of directors pursuant to like approval of the shareholders. (June 8, 1954, 68 Stat. 190, ch. 269, § 23; 1973 Ed., § 29-908j.)

§ 29-324. Bylaws.

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. (June 8, 1954, 68 Stat. 190, ch. 269, § 24; 1973 Ed., § 29-909.)

§ 29-325. Meetings of shareholders — Place; annual and special; right to vote.

(a) Meetings of shareholders may be held at such place within or without the District of Columbia as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 190, ch. 269, § 25; 1973 Ed., § 29-910.)

§ 29-326. Same — Notice.

(a) Except as provided in § 29-399.35 hereof, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

(b) If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. (June 8, 1954, 68 Stat. 190, ch. 269, § 26; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 6; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 5; 1973 Ed., § 29-910a.)

§ 29-327. Voting of shares; exclusion of shares of corporation's own stock; determination of number of outstanding shares.

(a) Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to 1 vote on each matter submitted to a vote at a meeting of shareholders.

(b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

(d) The articles of incorporation may provide that in all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give 1 candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or to distribute such votes on the same principle among any number of such candidates. (June 8, 1954, 68 Stat. 191, ch. 269, § 27; 1973 Ed., § 29-911.)

Section references. — This section is referred to in § 29-329.

Stock voting agreement valid. — An agreement whereby the majority stockholder and a minority stockholder agreed that their voting power should be equal, but which was

not endorsed upon the stock certificates, was not invalid. Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 905 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

Cited in National Confederation of Am. Ethnic Groups v. Genys, App. D.C., 457 A.2d 395 (1983); Johnson v. E.C. Ernst, Inc., 618 F. Supp. 156 (D.D.C. 1985).

§ 29-328. Same — Determination of shareholders entitled to notice of or to vote at meeting; closing of transfer books and fixing record date.

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock-transfer books shall be closed for a stated period but not to exceed, in any case, 50 days. If the stock-transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the stock-transfer books, the board of directors may fix in advance a date as the record date for any determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock-transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. (June 8, 1954, 68 Stat. 191, ch. 269, § 28; 1973 Ed., § 29-912.)

Board of Directors did not breach fiduciary obligation to shareholder by resetting record date, even though resetting the date was undeniably advantageous to a merger proposal favored by the board. Woodward & Lothrop, Inc. v. Schnabel, 593 F. Supp. 1385 (D.D.C. 1984).

§ 29-329. Same — By certain holders; proxy presumed valid.

(a) Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be

entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver or trustee in bankruptcy was appointed.

(d) Except as otherwise provided in § 29-327, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Shares standing in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(f) Shares standing in the name of 2 or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any 1 or more of such persons. If more than 1 of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy unless a different apportionment of the vote is requested by such tenants. (June 8, 1954, 68 Stat. 192, ch. 269, § 29; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 6; 1973 Ed., § 29-913.)

§ 29-330. Same — Voting trust; certificates.

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting-trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as is the record of shareholders of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose. The trustee or trustees may execute and deliver to the transferors voting-trust certificates which shall be transferable in the same manner and with the same effect as certificates representing shares. (June 8, 1954, 68 Stat. 192, ch. 269, § 30; 1973 Ed., § 29-914.)

§ 29-331. Same — Quorum of shareholders required.

(a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided,

that in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

(b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may have been transacted at the meeting as originally called.

(d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter or the articles of incorporation, and except that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. (June 8, 1954, 68 Stat. 191, ch. 269, § 31; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 7; 1973 Ed., § 29-915.)

§ 29-332. Same — Board of directors; qualifications.

(a) The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so provide. The articles of incorporation or bylaws may prescribe other qualifications for directors.

(b) Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors or services to the corporation as directors, officers, or otherwise. (June 8, 1954, 68 Stat. 193, ch. 269, § 32; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(4); 1973 Ed., § 29-916.)

Close corporations. — This section does not preclude the well-recognized doctrine permitting close corporations to act informally — an exception to the general rule that directors must act as a board at duly convened meetings. International Tours & Travel, Inc. v. Khalil, App. D.C., 491 A.2d 1149 (1985).

No exception to at-will doctrine. — The language of this section and §§ 29-335 and 29-343 does not fall within the exception to the at-will doctrine which is triggered only when the discharge is in response to an employee's refusal to commit an unlawful act or in the employee's exercise of a statutory right stated in Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985) because they create no statutory rights in a corporate director, the exercise of which would violate public policy. Atkins v. Industrial Telecommunications Ass'n, App. D.C., 660 A.2d 885 (1995).

Cited in Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership, 163 Bankr. 615 (Bankr. D.D.C. 1993).

§ 29-333. Same — Number; election.

The number of directors of a corporation shall be one or more. The number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from

time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. The directors shall hold office until the first annual meeting of shareholders, or until their successors shall have been selected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which elected or until a successor shall have been elected and qualified. (June 8, 1954, 68 Stat. 193, ch. 269, § 33; 1973 Ed., § 29-916a; Sept. 10, 1992, D.C. Law 9-144, § 4(m), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-334. Same — Classification.

The bylaws may provide that the directors be divided into either 2 or 3 classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be 2 classes, or until the third succeeding annual meeting, if there be 3 classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. (June 8, 1954, 68 Stat. 193, ch. 269, § 34; 1973 Ed., § 29-916b.)

§ 29-335. Same — Vacancies.

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. (June 8, 1954, 68 Stat. 193, ch. 269, § 35; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 8; 1973 Ed., § 29-916c.)

No exception to at-will doctrine. — This section and §§ 22-332 and 29-343 do not fall within the exception to the at-will doctrine which is triggered only when the discharge is in response to the employee's refusal to commit an unlawful act or in the employee's exercise of a statutory right stated in Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985)

because they create no statutory rights in a corporate director, the exercise of which would violate public policy. Atkins v. Industrial Telecommunications Ass'n, App. D.C., 660 A.2d 885 (1995).

§ 29-336. Same — Quorum.

A majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 193, ch. 269, § 36; 1973 Ed., § 29-916d.)

§ 29-337. Same — Executive committee; powers.

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate 2 or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law. (June 8, 1954, 68 Stat. 194, ch. 269, § 37; 1973 Ed., § 29-916e.)

§ 29-338. Same — Place of meetings; special meetings; use of conference telephone.

(a) Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

(b) Unless otherwise provided in the articles of incorporation or the bylaws, any or all directors may participate in a meeting of the board of directors or a committee of the board by means of conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting. (June 8, 1954, 68 Stat. 174, ch. 269, § 38; 1973 Ed., § 29-916f; Aug. 1, 1981, D.C. Law 4-24, § 3, 28 DCR 2618.)

Legislative history of Law 4-24. — Law 4-24, the "District of Columbia Nonprofit Corporation Act and Business Corporation Act Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-60, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-45 and transmitted to both Houses of Congress for its review.

§ 29-339. Same — Notice of meetings; waiver of notice.

Except as provided in § 29-399.35 hereof, meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. (June 8, 1954, 68 Stat. 194, ch. 269, § 39; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 7; 1973 Ed., § 29-916g.)

§ 29-340. Dividends — Declaration of and payment on outstanding shares; restrictions on payment of dividends.

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

(1) No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

(2) Dividends may be paid out of paid-in surplus or surplus arising from the surrender to the corporation of any of its shares only upon shares having a preferential right to receive dividends, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof; the limitations of this paragraph shall not limit nor be deemed to conflict with the provisions of this chapter in respect of the distribution of assets as a liquidating dividend;

(3) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend;

(4) If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate value so fixed in respect of such shares; the amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

(5) A split up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section;

(6) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation; and

(7) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation and may pay dividends from the net profits so determined by the directors. (June 8, 1954, 68 Stat. 194, ch. 269, § 40; 1973 Ed., § 29-917.)

Section references. — This section is referred to in § 29-363.

Cited in Public Inv., Ltd. v. Bandeirante Corp., 740 F.2d 1222 (D.C. Cir. 1984).

§ 29-341. Same — Partial liquidation; restrictions on distribution of assets; vote required for approval.

A corporation, from time to time, may distribute a portion of its assets, in cash or kind, to its shareholders as a liquidating dividend, in the following manner and subject to the following restrictions:

(1) The board of directors shall adopt a resolution recommending the payment of a liquidating dividend, specifying the class or classes of shareholders entitled thereto and the amount thereof, and directing that the question of such distribution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written or printed notice stating that the purpose or 1 of the purposes of such meeting is to consider the question of such distribution shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of such meeting;

(3) At such meeting a vote of the shareholders entitled to vote shall be taken by classes on the question of the proposed distribution. The affirmative vote of the holders of at least two-thirds of the outstanding shares of each class shall be required for the authorization of such distribution;

(4) No such distribution shall be made at a time when the corporation is insolvent or its net assets are less than its stated capital, or when such distribution would render the corporation insolvent or reduce its net assets below its stated capital;

(5) No such distribution shall be made to any class of shareholders unless all cumulative dividends accrued on preferred or special classes of shares entitled to preferential dividends shall have been fully paid;

(6) No such distribution shall be made to any class of shareholders which will reduce the remaining net assets below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

(7) Each such distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. (June 8, 1954, 68 Stat. 195, ch. 269, § 41; 1973 Ed., § 29-917a.)

Section references. — This section is referred to in § 29-363.

§ 29-342. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a corporation:

(1) The directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation;

(2) The directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of assets of a corporation to its shareholders which renders the corporation insolvent or reduces its net assets below its stated capital shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that the corporation is thereby rendered insolvent or its net assets are reduced below its stated capital;

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without an adequate provision for, or the payment and discharge of, all debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged; and

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(c) A director shall not be liable under either paragraph (1) or (2) of subsection (a) of this section if he relied and acted in good faith upon a balance sheet and profit-and-loss statement of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its

books of account, or certified by or otherwise represented in a written report of an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(d) Any director against whom a claim shall be asserted under or pursuant to this section, and who shall be held liable thereon, shall be entitled to contribution from the other directors who are likewise liable thereon.

(e) Any director against whom a claim shall be asserted under or pursuant to this section for the improper declaration of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who knowingly accepted or received any such dividend or assets, in proportion to the amounts received by them, respectively.

(f) No suit shall be brought against any director for any liability imposed by this chapter except within 3 years after the right of action shall accrue. (June 8, 1954, 68 Stat. 196, ch. 269, § 42; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 9; 1973 Ed., § 29-918.)

President of an association could be held personally liable on an obligation entered into by the association before the certificate of incorporation was issued. Robertson v. Levy, App. D.C., 197 A.2d 443 (1964).

Cited in Schroeder v. Weinstein, App. D.C., 585 A.2d 1382 (1991).

§ 29-343. Officers — Powers authorized.

(a) A corporation shall have a president and other officers, if any, prescribed in its bylaws, each of whom shall be elected by the board of directors at a time and in a manner prescribed by the bylaws.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (June 8, 1954, 68 Stat. 197, ch. 269, § 43; 1973 Ed., § 29-919; Sept. 10, 1992, D.C. Law 9-144, § 4(n), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

No exception to at-will doctrine. — This section and §§ 22-332 and 29-335 do not fall within the exception to the at-will doctrine which is triggered only when the discharge is in response to the employee's refusal to commit an unlawful act or in the employee's exercise of a statutory right stated in Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985) because they create no statutory rights in a corporate director, the exercise of which would violate public policy. Atkins v. Industrial Telecommunications Ass'n, App. D.C., 660 A.2d 885 (1995).

Cited in Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership, 163 Bankr. 615 (Bankr. D.D.C. 1993).

§ 29-344. Same — Removal.

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without

prejudice to the contract rights, if any, of the person so removed. (June 8, 1954, 68 Stat. 197, ch. 269, § 44; 1973 Ed., § 29-919a.)

Purpose of section is to insure preservation of an officer's or agent's existing contract rights while permitting removal when in the corporation's best interest. Sullivan v. Heritage Found., App. D.C., 399 A.2d 856 (1979).

§ 29-345. Books and records; requirements for right to examine and make extracts therefrom; liability for refusal of right.

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Any person or persons who shall be the holder or holders of record of at least 5% of all the outstanding shares of a corporation shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its record of shareholders and to make extracts therefrom.

(c) A holder of a voting-trust certificate evidencing an interest in a voting trust conforming to the provisions of this chapter shall have the same rights as a shareholder to examine and make extracts from the record of shareholders of the corporation.

(d) If any person or persons holding in the aggregate 5% or more of all of the outstanding shares of a corporation shall present to any officer, director, or registered agent of the corporation a written request stating the purpose thereof, for a statement of its affairs, it shall be his duty to make or procure such a statement sworn to by the president or a vice-president or by the treasurer or an assistant treasurer, embracing a particular account of its assets and liabilities in detail, and to have the same ready and on file at the registered office of the corporation within 30 days after the presentation of such request. Such statement shall at all times during business hours be open to the inspection of any shareholder and he shall be entitled to copy the same.

(e) Any corporation whose officers or agents shall refuse to allow any such shareholder, entitled under the provisions of this section to examine the record of shareholders, or his agent or attorney, so to examine and make extracts from its record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of $50, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within 2 years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the record of shareholders of such corporation or any other corporation.

(f) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation. (June 8, 1954, 68 Stat. 197, ch. 269, § 45; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 10; 1973 Ed., § 29-920.)

Cited in Murphy v. Washington Am. League Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959); Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661 (D.D.C. 1986).

§ 29-346. Incorporators.

One or more natural persons of the age of 18 years or older may act as incorporators of a corporation by signing and filing in duplicate in the office of the Mayor articles of incorporation for the corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46; 1973 Ed., § 29-921; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011; Sept. 10, 1992, D.C. Law 9-144, § 4(o), 39 DCR 4863.)

Section references. — This section is referred to in § 29-399.56.

Legislative history of Law 2-61. — Law 2-61, "An Amendment to the District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 2-165, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-131 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-347. Articles of incorporation — Contents.

(a) The articles of incorporation shall set forth:

(1) The name of the corporation;

(2) The period of duration, which may be perpetual;

(3) The purpose or purposes for which the corporation is organized;

(4) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of 1 class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;

(5) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting power, limitations, restrictions, qualifications, and the special or relative rights in respect of the shares of each class;

(6) A statement that the minimum amount of capital with which the corporation shall commence business shall be not less than $1,000;

(7) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between different series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(8) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation;

(9) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;

(10) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(11) The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify; and

(12) The name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (June 8, 1954, 68 Stat. 198, ch. 269, § 47; 1973 Ed., § 29-921a.)

Section references. — This section is referred to in §§ 29-399.55 and 29-399.56.

Section contemplates that the principal place of business might be outside the District after organization. Murphy v. Washington Am. League Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959).

§ 29-348. Same — Procedure for filing.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Mayor. If the Mayor finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Mayor, shall be delivered to the incorporators or their representatives. (June 8, 1954, 68 Stat. 199, ch. 269, § 48; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 8; 1973 Ed., § 29-921b.)

Section references. — This section is referred to in § 29-399.56.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-349. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (June 8, 1954, 68 Stat. 199, ch. 269, § 49; 1973 Ed., § 29-921c.)

Corporation comes into existence only when certificate of incorporation is issued, and before the certificate issues, there is no corporation de jure, de facto, or by estoppel. Robertson v. Levy, App. D.C., 197 A.2d 443 (1964).

§ 29-350. Commencement of corporate business restricted.

A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until at least the minimum amount of capital set forth in its articles of incorporation as the minimum amount of capital with which it will commence business has been fully paid in. (June 8, 1954, 68 Stat. 199, ch. 269, § 50; 1973 Ed., § 29-921d.)

§ 29-351. Organization meeting of directors.

After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held, at the call of a majority of the directors so named, for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the shareholders, in which event the bylaws shall be adopted by the shareholders), electing officers, and transacting any other business as may come before the meeting. The directors calling the meeting shall give at least 5 days notice by mail to each director so elected. The notice

shall state the time and place of the meeting; provided, however, that if all the directors waive notice in writing and fix a time and place for the organizational meeting no notice shall be required for the meeting. (June 8, 1954, 68 Stat. 199, ch. 269, § 51; 1973 Ed., § 29-921e; Sept. 10, 1992, D.C. Law 9-144, § 4(p), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-352. Amendment of articles of incorporation — Contents restricted; purposes.

(a) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(b) In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(1) To change its corporate name;

(2) To change its period of duration;

(3) To change, enlarge, or diminish its corporate purposes;

(4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

(5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;

(6) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(7) To change the designations of all or any part of its shares, whether issued or unissued, and to change the preferences, voting power, qualifications, limitations, restrictions, and the special or relative rights in respect of all or any part of its shares, whether issued or unissued;

(8) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(9) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(10) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(11) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(12) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;

(13) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;

(14) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued; or

(15) To limit, deny, or grant to shareholders of any class the preemptive right to subscribe for or acquire additional shares of the corporation, whether then or thereafter authorized. (June 8, 1954, 68 Stat. 200, ch. 269, § 52; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 9; 1973 Ed., § 29-921f.)

§ 29-353. Same — Procedure before acceptance of subscriptions to shares.

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

(1) Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation, verified and filed in duplicate with the Mayor. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation.

(2) Such amended articles of incorporation shall be delivered in duplicate original to the Mayor. If the Mayor finds that such amended articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(A) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(B) File 1 of such duplicate originals in his office; and

(C) Issue an amended certificate of incorporation, to which he shall affix the other duplicate original.

(3) The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative.

(4) Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the

place of the original articles of incorporation. (June 8, 1954, 68 Stat. 201, ch. 269, § 53; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 10; 1973 Ed., § 29-921g.)

Section references. — This section is referred to in § 29-399.57.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Amendment of articles of incorporation. — Where payment of subscription for all of the corporate stock was made to the promoter, but the corporate minute book showed no action by the board of directors with respect to subscription, the original incorporators could amend the articles of incorporation to increase capital stock. Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

§ 29-354. Same — Procedure after acceptance of subscriptions to shares.

Amendments to the articles of incorporation shall be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote at such a meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or a summary shall be included in the notice of the annual meeting.

(3) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. Unless the articles of incorporation provide otherwise, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless any class of shares is entitled to vote as a class in respect thereof, as hereinafter provided, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote. In no event shall the required shareholder vote be reduced to less than the affirmative vote of the holders of a majority of the outstanding shares entitled to vote.

(4) Any number of amendments may be submitted to the shareholders, and voted upon by them, at 1 meeting. (June 8, 1954, 68 Stat. 201, ch. 269,

§ 54; 1973 Ed., § 29-921h; Sept. 10, 1992, D.C. Law 9-144, § 4(q), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-358.1, 29-399.57 and 29-399.59.

Legislative history of Law 9-144. — See note to § 29-358.1.

Cited in Sankin v. 5410 Conn. Ave. Corp., 281 F. Supp. 524 (D.D.C. 1968), aff'd sub nom. Benn v. Sankin, 410 F.2d 1060 (D.C. Cir. 1969), cert. denied, 396 U.S. 1041, 90 S. Ct. 681, 24 L. Ed. 2d 685 (1970).

§ 29-355. Same — Voting by classes.

The holders of the outstanding shares of a class whether by the provisions of the articles of incorporation such class of stock is entitled to vote or not shall be entitled to vote as a class upon a proposed amendment which would:

(1) Increase or decrease the aggregate number of authorized shares of such class;

(2) Increase or decrease the par value of the shares of such class;

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;

(5) Change the designations, preferences, limitations, voting, or relative rights of the shares of such class;

(6) Change the shares of such class having a par value into the same or a different number of shares without par value, or change the shares of such class without par value into the same or a different number of shares having a par value;

(7) Change the shares of such class, whether with or without par value, into a different number of shares of the same class, or into the same or a different number of shares, either with or without par value, of other classes;

(8) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series;

(9) Create a new class of shares having rights and preferences prior and superior to the shares of such class; and

(10) Limit or deny the existing preemptive rights of the shares of such class. (June 8, 1954, 68 Stat. 202, ch. 269, § 55; 1973 Ed., § 29-922.)

§ 29-356. Articles of amendment — Contents.

(a) The articles of amendment shall be executed in duplicate by the corporation, by its president or a vice-president, and shall set forth:

(1) The name of the corporation;

(2) The amendment so adopted;

(3) A statement that the amendment was advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law;

(4) The date of the adoption of the amendment by the shareholders;

(5) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and

(6) If the amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus as changed by the amendment. (June 8, 1954, 68 Stat. 202, ch. 269, § 56; 1973 Ed., § 29-923; Sept. 10, 1992, D.C. Law 9-144, § 4(r), 39 DCR 4863.)

Section references. — This section is referred to in § 29-399.57.

Legislative history of Law 9-144. — See note to § 29-358.1.

Editor's notes. — D.C. Law 9-144, in amending this section, retained only (a).

§ 29-357. Same — Procedure for filing.

(a) Duplicate originals of the articles of amendment shall be delivered to the Mayor. If the Mayor finds that the articles of amendment conform to law, he shall, when all fees and taxes have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Issue a certificate of amendment to which he shall affix the other duplicate original;

(b) The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 203, ch. 269, § 57; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 11; 1973 Ed., § 29-923a.)

Section references. — This section is referred to in § 29-399.57.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-358. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall

be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (June 8, 1954, 68 Stat. 203, ch. 269, § 58; 1973 Ed., § 29-923b.)

§ 29-358.1. Restated articles of incorporation.

(a) A corporation may, whenever desired, integrate into a single instrument all of the provisions of its articles of incorporation that are then in effect and operative as a result of there having been filed previously with the Mayor one or more articles or other instruments, and it may at the same time also further amend its articles of incorporation by adopting a restated articles of incorporation.

(b) If the restated articles of incorporation merely restate and integrate but do not further amend the articles of incorporation, as previously amended or supplemented by any instrument that was filed, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by § 29-354 for amendment of the articles of incorporation shall be applicable. If the restated articles of incorporation restate and integrate and also further amend in any respect the articles of incorporation, as previously amended or supplemented, it shall be proposed by the directors and adopted by the stockholders in the manner and by the vote prescribed by § 29-354, or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by § 29-353.

(c) Restated articles of incorporation shall be specifically designated as such in the heading. The restated articles shall state, either in the heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original articles of incorporation with the Mayor. The restated articles shall also state that they were duly adopted in accordance with the provisions of this section. If the restated articles were adopted by the board of directors without a vote of the shareholders (unless it was adopted pursuant to the provisions of § 29-353), they shall state that they only restate and integrate and do not further amend the provisions of the corporation's articles of incorporation as previously amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated article. The restated articles of incorporation may omit (i) the provisions of the original articles of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares, and (ii) the provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if the change, exchange, reclassification, or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

(d) Restated articles of incorporation shall be executed in duplicate by the corporation, by its president or a vice-president. Duplicate originals of the restated articles shall be delivered to the Mayor. If the Mayor finds that the

restated articles conform to law, the Mayor shall, when all fees and charges have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Issue restated articles to the corporation.

(e) Upon its filing with the Mayor, the original articles of incorporation, as previously amended or supplemented, shall be superseded and the restated articles of incorporation, including any further amendments or changes made, shall be the articles of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

(f) Any amendment or change effected in connection with the restatement and integration of the articles of incorporation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if separate articles of amendment were filed to effect such an amendment or change. (June 8, 1954, ch. 269, § 58a, as added Sept. 10, 1992, D.C. Law 9-144, § 4(s), 39 DCR 4863.)

Legislative history of Law 9-144. — Law 9-144, the "District of Columbia Corporation Law Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-64, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-224 and transmitted to both Houses of Congress for its review. D.C. Law 9-144 became effective on September 10, 1992.

§ 29-359. Redemption and cancellation of shares.

(a) If the articles of incorporation provide that redeemable shares redeemed or purchased or otherwise acquired by the corporation shall be cancelled and shall not be reissued, then, in the event of such cancellation of shares, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled.

(b) No redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution.

(c) When redeemable shares of a corporation have been cancelled pursuant to the provisions of the articles of incorporation, a statement shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth:

(1) The name of the corporation;

(2) The aggregate number of shares which the corporation had authority to issue, itemized by classes and series;

(3) The number of shares cancelled, itemized by classes and series;

(4) The number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to the cancellation;

(5) A statement of the aggregated number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to the cancellation; and

(6) A statement, expressed in dollars, of the amount of the stated capital and the amount of paid-in surplus of the corporation after giving effect to the cancellation.

(d) Such statement shall be delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

(e) The filing of such statement by the Mayor shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

(f) Nothing contained in this section shall be construed to forbid a reduction of authorized shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 203, ch. 269, § 59; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 12; 1973 Ed., § 29-924; Sept. 10, 1992, D.C. Law 9-144, § 4(t), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-360. Cancellation of reacquired shares.

(a) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it through redemption, purchase, or otherwise, and in the event of such a cancellation, a statement of cancellation shall be filed as provided in this section. When any reacquired shares have been cancelled by resolution of the board of directors, a statement shall be executed in duplicate by the corporation, by its president or a vice-president, which statement shall set forth:

(1) The name of the corporation;

(2) The aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(3) The aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class before giving effect to the cancellation;

(4) The number of shares cancelled, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(5) A statement that the shares cancelled were cancelled by a resolution duly adopted by the board of directors;

(6) The aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to the cancellation;

(7) A statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation before giving effect to the cancellation; and

(8) A statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation after giving effect to the cancellation.

(b) Such statement shall be delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

(c) Upon the filing of such statement by the Mayor, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled and the shares so cancelled shall be deemed to be authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 204, ch. 269, § 60; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 13; 1973 Ed., § 29-924b; Sept. 10, 1992, D.C. Law 9-144, § 4(u), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-361. Reduction of stated capital — Procedure; effect of approval; filing.

(a) The reduction of the stated capital of a corporation where the reduction is not accompanied by an exchange, reclassification, or cancellation of shares, or by a reduction in the par value of issued shares, or by a reduction of the number of authorized shares of any class below the number of issued shares of that class, or by a redemption and cancellation of shares, may be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of the reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written or printed notice, stating that the purpose or one of the purposes of the meeting is to consider the question of reducing the stated capital of the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders; and

(3) At the meeting a vote of the shareholders entitled to vote shall be taken on the question of the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless the articles of incorporation provide otherwise. In no event shall the required shareholder vote be reduced to less than the affirmative vote of the holders of a majority of the outstanding shares entitled to vote.

(b) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth:

(1) The name of the corporation;

(2) A statement that the statement was advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law;

(3) A copy of the resolution of the shareholders approving the reduction; and

(4) A statement of the manner in which the reduction is effected, and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus of the corporation adjusted to give effect to the reduction.

(c) The statement shall be delivered to the Mayor. If the Mayor finds that the statement conforms to law, the Mayor shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 205, ch. 269, § 61; Sept. 2, 1957, 71 Stat. 570,

Pub. L. 85-254, § 14; 1973 Ed., § 29-925; Sept. 10, 1992, D.C. Law 9-144, § 4(v), 39 DCR 4863.)

Section references. — This section is referred to in § 29-362.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-362. Same — Limitations; paid-in surplus.

(a) No reduction of stated capital shall be made under the provisions of § 29-361 which would reduce the amount of the aggregate stated capital of the corporation to an amount less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value, after such reduction, of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

(b) The surplus, if any, created by or arising out of the reduction of the stated capital of a corporation shall be deemed to be paid-in surplus, except where such reduction is effected by the cancellation of its own shares belonging to the corporation, or by the redemption and cancellation of shares, in either of which events the paid-in surplus, if any, created by such reduction shall not exceed the amount by which the stated capital represented by such shares exceeded the cost thereof to the corporation. (June 8, 1954, 68 Stat. 206, ch. 269, § 62; 1973 Ed., § 29-925a.)

§ 29-363. Reduction of paid-in surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its paid-in surplus to the payment of dividends as permitted by § 29-340, or to the distribution of liquidating dividends as permitted by § 29-341, to the payment of reasonable compensation for the sale or underwriting of its shares as permitted by § 29-319, the reduction or elimination of any deficit arising from operating or other losses or from diminution in value of its assets. (June 8, 1954, 68 Stat. 206, ch. 269, § 63; 1973 Ed., § 29-926.)

§ 29-364. Procedure for merger.

Any 2 or more domestic corporations may merge into 1 of such corporations in the following manner: the board of directors of each corporation shall, by

resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 206, ch. 269, § 64; 1973 Ed., § 29-927; Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Section references. — This section is referred to in § 29-372.1.

Legislative history of Law 2-117. — See note to § 29-303.

§ 29-365. Procedure for consolidation.

Any 2 or more domestic corporations may consolidate into a new corporation in the following manner: The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidation;

(3) The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 207, ch. 269, § 65; 1973 Ed., § 29-927a.)

Section references. — This section is referred to in § 29-372.1.

§ 29-366. Merger or consolidation — Submission of plan to shareholders; meeting; notice.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than 20 days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state

the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. (June 8, 1954, 68 Stat. 207, ch. 269, § 66; 1973 Ed., § 29-927b.)

Section references. — This section is referred to in § 29-372.1.

§ 29-367. Same — Vote required for approval by shareholders.

At each meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Unless the articles of incorporation provide otherwise, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares of each corporation unless as to any of the corporations 2 or more classes of shares are issued in which event as to the corporation or corporations the plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the outstanding shares of each class. In no event shall the required shareholder vote be reduced to less than the affirmative vote of a majority of the outstanding shares. (June 8, 1954, 68 Stat. 207, ch. 267, § 67; 1973 Ed., § 29-927c; Sept. 10, 1992, D.C. Law 9-144, § 4(w), 39 DCR 4863.)

Section references. — This section is referred to in § 29-372.1.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-368. Articles of merger or consolidation; contents; procedure for filing.

(a) Upon approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation, by its president or a vice president, and shall set forth:

(1) The plan of merger or the plan of consolidation; and

(2) As to each corporation, a statement that the plan of merger or the plan of consolidation was advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law.

(b) Such articles of merger or consolidation shall be delivered to the Mayor. If the Mayor finds that such articles of merger or consolidation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 or such duplicate originals in his office; and

(3) Issue a certificate of merger or certificate of consolidation to which he shall attach the other duplicate original.

(c) The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be delivered to the surviving or new corporation, as the case may be, or its representative. (June 8, 1954, 68 Stat.

207, ch. 269, § 68; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 15; 1973 Ed., § 29-927d; Sept. 10, 1992, D.C. Law 9-144, § 4(x), 39 DCR 4863.)

Section references. — This section is referred to in § 29-372.1.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-369. Merger or consolidation — Effective date.

Upon the issuance of the certificate of merger or the certificate of consolidation by the Mayor, the merger or consolidation shall be effected. (June 8, 1954, 68 Stat. 208, ch. 269, § 69; 1973 Ed., § 29-927e.)

Section references. — This section is referred to in § 29-372.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-370. Same — Emergence of surviving or new corporation; cessation of separate existence of corporate parties; rights, privileges, immunities, powers and liabilities; aggregate amount of net assets for payment of dividends.

When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as a private nature, of each of the merging or consolidating corporations; and all property — real, personal, and mixed — and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(7) The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. (June 8, 1954, 68 Stat. 208, ch. 269, § 70; 1973 Ed., § 29-927f.)

Section references. — This section is referred to in § 29-372.1.

§ 29-371. Same — Domestic and foreign corporations; filing.

(a) One or more foreign corporations and 1 or more domestic corporations may be merged or consolidated if permitted by the laws of the state under which each such foreign corporation is organized.

(b) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(c) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in the District of Columbia, and in every case it shall file with the Mayor:

(1) An agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) An irrevocable appointment of the Mayor of the District of Columbia as its agent to accept service of process in any such proceeding;

(3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) A post office address to which the Mayor may mail a copy of any process against the corporation that may be served on them.

(d) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (June 8, 1954, 68 Stat. 209, ch. 269, § 71; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(6); 1973 Ed., § 29-927g.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-372. Same — Parent corporation and wholly owned subsidiary; effect of certificate of merger.

(a) Any corporation now or hereafter organized under the provisions of this chapter or existing under the laws of the District for the purpose of carrying on any kind of business authorized by this chapter, owning all of the stock of any other corporation now or hereafter organized under this chapter or existing under the laws of the District, or now or hereafter organized under the laws of any other jurisdiction of the United States, if the laws under which the other corporation is formed shall permit a merger as herein provided, may file, in

duplicate original with the Mayor, a certificate of ownership in its name, signed by its president or a vice president, and setting forth a copy of the resolution of its board of directors to merge the other corporation, and to assume all of its obligations and the date of the adoption. If the Mayor finds that the certificate of ownership conforms to law, the Mayor shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Issue a certificate of merger to which the Mayor shall affix the other duplicate original.

(b) The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative.

(c) Upon the issuance of the certificate of merger, the merger shall be effected and thereupon all of the estate, property, rights, privileges, and franchises of such other corporation shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such parent corporation, and except as hereinafter in this section provided, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege, or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law or laws by or pursuant to which such parent corporation is organized, or operates in the District of Columbia. The parent corporation shall be deemed to have assumed all of the obligations and liabilities of the merged corporation and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The parent corporation may relinquish its corporate name and assume in lieu thereof the name of the merged corporation, by including it in a provision to that effect in the resolution of merger adopted by the directors and set forth in the certificate of ownership, and upon the filing of such certificate the change of name shall be completed, with the same force and effect and subject to the same conditions and consequences as if such change had been accomplished by proceedings under the appropriate section of this chapter. (June 8, 1954, 68 Stat. 210, ch. 269, § 72; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 16; 1973 Ed., § 29-927h; Sept. 10, 1992, D.C. Law 9-144, § 4(y), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-372.1. Same — Domestic corporation and limited partnership.

(a) Any 1 or more domestic corporations may merge or consolidate with 1 or more domestic limited partnerships or limited partnerships of any state or states of the United States and 1 or more domestic limited partnerships or limited partnerships of any state or states of the United States may merge with or consolidate into it, unless the laws of the state or states forbid such a merger or consolidation. The corporation or corporations and the 1 or more limited partnerships may merge with or into a corporation, which may be any 1 of the corporations, or they may merge with or into a limited partnership, which may be any one of the limited partnerships, or they may consolidate into a new corporation or limited partnership formed by the consolidation, which shall be a corporation or limited partnership of the District or any state of the United States which permits such a merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) Each corporation and limited partnership shall enter into a written plan of merger or consolidation. The plan shall state (i) the terms and conditions of the merger or consolidation; (ii) the mode of carrying the same into effect; (iii) the manner of converting the shares of stock of each corporation and the partnership interests of each limited partnership into shares, partnership interests, or other securities of the entity surviving or resulting from the merger or consolidation, and if any shares of any corporation or any partnership interests of any limited partnership are not to be converted solely into shares, partnership interests, or other securities of the entity surviving or resulting from such a merger or consolidation, the cash, property, rights, or securities of any other corporation or entity which the holders of the shares or partnership interests are to receive in exchange for, or upon conversion of the shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests, or other securities of the entity surviving or resulting from such a merger or consolidation; and (iv) any details or provisions deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited partnership. Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan, provided that the manner in which the facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation.

(c) The plan required by subsection (b) of this section shall be adopted and approved by each of the corporations in the same manner as is provided in §§ 29-364 through 29-367, and, in the case of the limited partnerships, in

accordance with their limited partnership agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be.

(d) Upon approval, articles of merger or consolidation shall be executed by each corporation, by its president or a vice-president, and by each limited partnership and shall set forth:

(1) The plan of merger or consolidation; and

(2) As to each party to the merger or consolidation, a statement that the plan of merger or consolidation was approved in accordance with the articles of incorporation or partnership agreement and applicable law.

(e) The articles of merger or consolidation shall be filed with the Mayor as provided in § 29-368 and shall become effective for all purposes of the laws of the District when and as provided in § 29-369 with respect to the merger or consolidation of domestic corporations.

(f) If the surviving or new entity is to be governed by the laws of any jurisdiction other than the District and intends to do business in the District, it shall comply with the provisions of District law with respect to foreign limited partnerships or foreign corporations, and in every case it shall file with the Mayor:

(1) An agreement that it may be served with process in the District in any proceeding for the enforcement of any obligation of any corporation or limited partnership that is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting limited partner or shareholder of any District limited partnership or corporation against the surviving or new entity;

(2) An irrevocable appointment of the Mayor of the District as its agent to accept service of process in any proceeding pursuant to paragraph (1) of this subsection;

(3) An agreement that it will promptly pay to the dissenting limited partners or shareholders of any limited partnership or District corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting limited partners or shareholders; and

(4) The address of the registered agent to which the Mayor may mail a copy of any process against the surviving or new entity that may be served on the surviving or new entity.

(g) The effect of such a merger or consolidation shall be as provided in § 29-370 if the surviving or new entity is a corporation governed by the laws of the District. If the surviving or new entity is to be governed by the laws of any jurisdiction other than the District, the effect of such a merger or consolidation shall be as provided in § 29-370 except insofar as the laws of another jursidiction provide otherwise. (June 8, 1954, ch. 269, § 72a, as added Sept. 10, 1992, D.C. Law 9-144, § 4(z), 39 DCR 4863; Sept. 8, 1995, D.C. Law 11-38, § 4(a), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 validated previously made changes in (e) and (g).

Legislative history of Law 9-144. — See note to § 29-358.1.

Legislative history of Law 11-38. — Law 11-38, the "Limited Liability Company Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-75, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-71 and transmitted to both Houses of Congress for its review. D.C. Law 11-38 became effective on September 8, 1995.

§ 29-372.2. Same — Domestic corporation and limited liability company.

(a) Any 1 or more domestic corporations may merge or consolidate with 1 or more domestic limited liability companies or limited liability companies of any state or states of the United States, and 1 or more domestic limited liability companies or limited liability companies of any state or states of the United States may merge with or consolidate into it, unless the laws of the state or states forbid such a merger of consolidation. The corporation or corporations and the 1 or more limited liability companies may merge with or into a corporation, which may be any 1 of the corporations, or they may merge with or into a limited liability company, which may be any 1 of the limited liability companies, or they may consolidate into a new corporation or limited liability company formed by the consolidation, which shall be a corporation or limited liability company of the District or any state of the United States which permits such a merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) Each corporation and limited liability company shall enter into a written plan of merger or consolidation. The plan shall state: (1) the terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of stock of each corporation and the interests of each limited liability company into shares, limited liability company interests, or other securities of the entity surviving or resulting from the merger or consolidation, and if any shares of any corporation or any interests of any limited liability company are not to be converted solely into shares, limited liability company interests, or other securities of the entity surviving or resulting from such a merger or consolidation, the cash, property rights, or securities of any other corporation or entity which the holders of the shares or limited liability company interests are to receive in exchange for, or upon conversion of the shares or limited liability company interests and the surrender of any certificates evidencing them, which cash, property rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company interests, or other securities of the entity surviving or resulting from such a merger or consolidation; and (4) any details or provisions deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited liability company. Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan, provided that the manner in which the facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation.

(c) The plan required by subsection (b) of this section shall be adopted and

approved by each of the corporations in the same manner as is provided in §§ 29-364 through 29-367 and, in the case of the limited liability companies, in accordance with their articles of organization or operating agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be.

(d) Upon approval, articles of merger or consolidation shall be executed by each corporation, by its president or a vice-president, and by each limited liability company and shall set forth:

(1) The plan of merger or consolidation; and

(2) As to each party to the merger or consolidation, a statement that the plan of merger or consolidation was approved in accordance with the articles of incorporation, articles of organization or operating agreement, and applicable law.

(e) The articles of merger or consolidation shall be filed with the Mayor as provided in § 29-368 and shall become effective for all purposes of the laws of the District when and as provided in § 29-369 with respect to the merger or consolidation of domestic corporations.

(f) If the surviving or new entity is to be governed by the laws of any jurisdiction other than the Distict and intends to do business in the District, it shall comply with the provisions of District law with respect to foreign limited liability companies or foreign corporations, and in every case it shall file with the Mayor:

(1) An agreement that it may be served with process in the District in any proceeding for the enforcement of any obligation of any corporation or limited liability company that is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any District corporation against the surviving or new entity;

(2) An irrevocable appointment of the Mayor of the District as its agent to accept service of process in any proceeding pursuant to paragraph (1) of this subsection;

(3) An agreement that it will promptly pay to the dissenting shareholders of any District corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) The address of the registered agent to which the Mayor may mail a copy of any process against the surviving or new entity that may be served on the surviving or new entity.

(g) The effect of such a merger or consolidation shall be as provided in § 29-370 if the surviving or new entity is a corporation governed by the laws of the District. If the surviving or new entity is to be governed by the laws of any jurisdiction other than the District, the effect of such a merger or consolidation shall be as provided in § 29-370, except insofar as the laws of another jurisdiction provide otherwise.

(h) No member of a domestic limited liability company that is a party to a merger or consolidation will, as a result of the merger or consolidation, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the agreement of merger or consolidation or otherwise consents to becoming personally liable. (June 8, 1954, 68 Stat. 179, ch. 269, § 72b, as added July 23, 1994, D.C. Law 10-138, § 77, 41 DCR 3010.)

Legislative history of Law 10-138. — Law 10-138, the "Limited Liability Company Act of 1994," was introduced in Council and assigned Bill No. 10-277, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-243 and transmitted to both Houses of Congress for its review. D.C. Law 10-138 became effective on July 23, 1994.

§ 29-373. Same — Rights of dissenting shareholders.

(a) If a shareholder of a corporation which is a party to a merger or consolidation shall file with the corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to the plan of merger or consolidation, and shall not vote in favor of the plan, and the shareholder, within 20 days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his or her shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to the shareholder the fair value of the shares forthwith, in the case of holders of uncertificated shares, or upon surrender of the certificate or certificates representing the shares, in the case of holders of shares represented by certificates. Such a demand shall state the number and class of the shares owned by the dissenting shareholder. Any shareholder failing to make demand within the 20-day period shall be bound by the terms of the merger or consolidation.

(b) If within 30 days after the date on which the merger or consolidation was effected the value of the shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within 90 days after the date on which the merger or consolidation was effected, in the case of holders of uncertificated shares, or upon surrender of the certificate or certificates representing the shares, in the case of holders of shares represented by certificates. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in the shares of the corporation.

(c) If within the period of 30 days the shareholder and the surviving or new corporation do not agree, the dissenting shareholder may, within 60 days after the expiration of the 30-day period, file a petition in any court of competent jurisdiction within the District of Columbia asking for a finding and determination of the fair value of the shares, and shall be entitled to judgment against the surviving or new corporation for the amount of the fair value as of the day prior to the date on which the vote was taken approving the merger or consolidation, together with interest at the rate of 5% per annum to the date of the judgment. The judgment shall be payable forthwith, in the case of holders of uncertificated shares, or upon surrender of the certificate or certificates representing the shares to the surviving or new corporation, in the case of holders of shares represented by certificates. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in the shares or in the surviving or new corporation. The shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file the petition within the time herein limited,

the shareholder and all persons claiming under him or her shall be bound by the terms of the merger or consolidation.

(d) The right of a dissenting shareholder to be paid the fair value of his or her shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation. (June 8, 1954, 68 Stat. 210, ch. 269, § 73; 1973 Ed., § 29-927i; Sept. 10, 1992, D.C. Law 9-144, § 4(aa), 39 DCR 4863.)

Section references. — This section is referred to in § 41-428.

Legislative history of Law 9-144. — See note to § 29-358.1.

Cited in Davis v. Universal Corp., App. D.C., 133 A.2d 479 (1957).

§ 29-374. Sale, lease, exchange, or mortgage of assets in usual and regular course of business.

The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. (June 8, 1954, 68 Stat. 211, ch. 269, § 74; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 17; 1973 Ed., § 29-928.)

§ 29-375. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not the other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each shareholder of record entitled to vote within the time and in the manner provided by this chapter for the giving of notice of meetings of shareholders.

(3) At such meetings the shareholders may authorize the sale, lease, exchange, mortgage, pledge, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions and the consideration to be received by the corporation. Unless the articles of incorporation provide otherwise, the authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless there are 2 or more classes of stock issued and outstanding and entitled to vote, in which event the authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each of the classes of shares issued and outstanding and entitled to vote. In no event shall the required shareholder vote be reduced to less than the affirmative vote of the holders of a majority of the outstanding shares entitled to vote.

(4) After the authorization by a vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. (June 8, 1954, 68 Stat. 211, ch. 269, § 75; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 18; 1973 Ed., § 29-929; Sept. 10, 1992, D.C. Law 9-144, § 4(bb), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Transfer of franchise not disposition of assets. — A corporation's transfer of its major league baseball franchise from 1 location to another was not such a disposition of assets as required approval of two-thirds of its stockholders. Murphy v. Washington Am. League Base Ball Club, Inc., 293 F.2d 522 (D.C. Cir. 1961).

§ 29-376. Dissolution of corporation — By voluntary act of incorporators; procedure for filing of articles of dissolution.

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within 1 year from the date of the issuance of its certificate of incorporation in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

(A) The name of the corporation;

(B) The date of issuance of its certificate of incorporation;

(C) That none of its shares have been issued;

(D) That the corporation has not commenced business;

(E) That the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(F) That no debts of the corporation remain unpaid; and

(G) That all the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the Mayor. If the Mayor finds that the articles of dissolution conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(A) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(B) File 1 of such duplicate originals in his office; and

(C) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original affixed thereto, shall be delivered to the incorporators or their representatives.

(4) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 212, ch. 269, § 76; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 19; 1973 Ed., § 29-930.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-377. Same — By written consent of shareholders.

A corporation may be dissolved by the written consent of the holders of record of all of its outstanding shares in the following manner: Upon the execution of written consent by all the shareholders of record, a statement of intent to dissolve shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth and contain:

(1) The name of the corporation;

(2) The names and respective addresses, including street and number, if any, of its officers;

(3) The names and respective addresses, including street and number, if any, of its directors;

(4) A copy of the agreement signed by all shareholders of record of the corporation consenting to its dissolution; and

(5) A statement that the agreement has been signed by all shareholders of record of the corporation or signed in their names by their duly authorized attorneys. (June 8, 1954, 68 Stat. 213, ch. 269, § 77; 1973 Ed., § 29-930a; Sept. 10, 1992, D.C. Law 9-144, § 4(cc), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-378. Same — By act of corporation; procedure; vote required for approval.

A corporation may be dissolved by the act of the corporation in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such a meeting a vote of the shareholders entitled to vote shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless the articles of incorporation provide otherwise. In no event shall the required shareholder vote be reduced to less than the affirmative vote of the holders of a majority of the outstanding shares entitled to vote.

(4) Upon the adoption of such a resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth:

(A) The name of the corporation;

(B) The names and respective addresses, including street and number, if any, of its officers;

(C) The names and respective addresses, including street and number, if any, of its directors;

(D) A statement that the resolution was advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law; and

(E) A copy of the resolution of the shareholders authorizing the dissolution of the corporation. (June 8, 1954, 68 Stat. 213, ch. 269, § 78; 1973 Ed., § 29-930b; Sept. 10, 1992, D.C. Law 9-144, § 4(dd), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-379. Same — Procedure for filing of statement of intent to dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 213, ch. 269, § 79; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 20; 1973 Ed., § 29-930c.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-380. Same — Effect of statement of intent to dissolve.

Upon the filing by the Mayor of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the proper winding up thereof. (June 8, 1954, 68 Stat. 214, ch. 269, § 80; 1973 Ed., § 29-930d.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-381. Same — Liquidation of business and affairs.

After the filing by the Mayor of a statement of intent to dissolve:

(1) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(2) The corporation, at any time during the liquidation of its business and affairs, may make application to the court to have the liquidation continued under the supervision of the court as provided in this chapter. (June 8, 1954, 68 Stat. 214, ch. 269, § 81; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(c)(2); 1973 Ed., § 29-930e.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-382. Voluntary dissolution proceedings — Revocation by shareholders' written consent.

By the written consent of the holders of record of all of its outstanding shares, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Mayor as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner: Upon the execution of written consent by all the shareholders of record, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth and contain:

(1) The name of the corporation;

(2) The names and respective addresses, including street and number, if any, of its officers;

(3) The names and respective addresses, including street and number, if any, of its directors;

(4) A copy of the agreement signed by all shareholders of record of the corporation revoking the voluntary dissolution proceedings; and

(5) That the agreement is signed by all shareholders of record of the corporation or signed in their names by their duly authorized attorneys. (June 8, 1954, 68 Stat. 214, ch. 269, § 82; 1973 Ed., § 29-930f; Sept. 10, 1992, D.C. Law 9-144, § 4(ee), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-383. Same — Revocation by act of corporation.

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Mayor as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of the revocation be submitted to a vote at a meeting of shareholders.

(2) Written or printed notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At the meeting a vote of the shareholders entitled to vote shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless the articles of incorporation provide otherwise. In no event shall the required shareholder vote be reduced to less than the affirmative vote of the holders of a majority of the outstanding shares entitled to vote.

(4) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth:

(A) The name of the corporation;

(B) The names and respective addresses, including street and number, if any, of its officers;

(C) The names and respective addresses, including street and number, if any, of its directors;

(D) A statement that the resolution was advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law; and

(E) A copy of the resolution of the shareholders revoking the voluntary dissolution proceedings. (June 8, 1954, 68 Stat. 215, ch. 269, § 83; 1973 Ed., § 29-930g; Sept. 10, 1992, D.C. Law 9-144, § 4(ff), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-384. Same — Filing of statement of revocation.

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 215, ch. 269, § 84; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 21; 1973 Ed., § 29-930h.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-385. Same — Effect of statement of revocation.

Upon the filing by the Mayor of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may thereupon again carry on its business. (June 8, 1954, 68 Stat. 215, ch. 269, § 85; 1973 Ed., § 29-930i.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-386. Articles of dissolution.

When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation, by its president or a vice-president, which shall set forth:

(1) The name of the corporation;

(2) That the corporation has theretofore filed with the Mayor a statement of intent to dissolve, and the date on which the statement was filed;

(3) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

(5) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit. (June 8, 1954, 68 Stat. 216, ch. 269, § 86; 1973 Ed., § 29-930j; Sept. 10, 1992, D.C. Law 9-144, § 4(gg), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-387. Filing of articles of dissolution; effect of certificate of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Mayor. If the Mayor finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each such duplicate original the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Issue a certificate of dissolution, to which he shall affix the other duplicate original.

(b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter. (June 8, 1954, 68 Stat. 216, ch. 269, § 87; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 22; 1973 Ed., § 29-930k.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-388. Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of a court of equity in an action instituted by the Mayor in the name of the District of Columbia, when it is made to appear to the court that:

(1) The franchise of the corporation was procured through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter;

(3) The corporation has failed for 30 days to appoint and maintain a registered agent as provided in this chapter; or

(4) The corporation has failed for 30 days after change of its registered office or registered agent to file with the Mayor a statement of such change. (June 8, 1954, 68 Stat. 216, ch. 269, § 88; 1973 Ed., § 29-931.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-389. Commencement of action for involuntary dissolution; summons; notice.

Every action for the involuntary dissolution of a corporation on the grounds hereinbefore provided shall be commenced by the Mayor in the court. Summons shall issue and shall be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Mayor shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Mayor shall cause a copy of such notice to be mailed by registered mail to the corporation at its registered office within 10 days after the first publication thereof. The certificate of the Mayor of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for 3 successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first publication of such notice. The cost of publication of such notice shall be paid by the Mayor, unless the decree is against the corporation and such cost is collected from it. (June 8, 1954, 68 Stat. 217, ch. 269, § 89; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(c)(2); 1973 Ed., § 29-931a.)

Section references. — This section is referred to in § 26-811.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-390. Liquidation proceedings — Jurisdiction of court.

(a) The court shall have full power to liquidate the assets and business of a corporation:

(1) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(2) When an action has been commenced by the Mayor to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

(3) In an action by a shareholder when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(4) In an action by a shareholder when it is established that the shareholders are deadlocked in voting power and for that reason have been unable at 2 consecutive annual meetings to elect successors to directors whose terms had expired.

(b) Proceedings under this section shall be brought in the court.

(c) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. (June 8, 1954, 68 Stat. 217, ch. 269, § 90; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 11; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(c)(2); 1973 Ed., § 29-931b.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-391. Same — Procedure by court; authority of receivers; distribution of assets.

(a) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (June 8, 1954, 68 Stat. 217, ch. 269, § 91; 1973 Ed., § 29-931c.)

Section references. — This section is referred to in §§ 26-811, 29-399.65, and 29-399.66.

Cited in Schroeder v. Weinstein, App. D.C., 585 A.2d 1382 (1991).

§ 29-392. Same — Qualifications of receivers.

A receiver shall in all cases give such bond as the court may direct with such sureties as the court may require. (June 8, 1954, 68 Stat. 218, ch. 269, § 92; 1973 Ed., § 29-931d.)

Section references. — This section is referred to in § 26-811.

§ 29-393. Same — Filing of claims.

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath

of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (June 8, 1954, 68 Stat. 218, ch. 269, § 93; 1973 Ed., § 29-931e.)

§ 29-394. Same — Discontinuance.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear to the court that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (June 8, 1954, 68 Stat. 218, ch. 269, § 94; 1973 Ed., § 29-931f.)

§ 29-395. Same — Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 218, ch. 269, § 95; 1973 Ed., § 29-931g.)

§ 29-396. Same — Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Mayor. No fee shall be charged by the Mayor for the filing thereof. (June 8, 1954, 68 Stat. 219, ch. 269, § 96; 1973 Ed., § 29-931h.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-397. Survival of remedy after dissolution.

The dissolution of a corporation either: (1) by the issuance of a certificate of dissolution by the Mayor; or (2) by proclamation of the Mayor for failure to pay annual report fees or file annual reports as provided in the chapter; or (3) by expiration of its period of duration; shall not take away or impair any remedy available to or against such corporation, its directors, or shareholders, or any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 2 years so as to extend its period of duration. (June 8, 1954, 68 Stat. 219, ch. 269, § 97; 1973 Ed., § 29-931i.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Causes of action on rights or claims existing prior to dissolution pursuant to clause (2) of this section must be brought within 2 years. Columbia Inst. of Radio & Television Broadcasting, Inc. v. Shehyn, 336 F.2d 974 (D.C. Cir. 1964).

This section would not bar a corporation's claim filed more than 2 years after its dissolution that it was the object of an illegitimate scheme to eliminate it from the market, and that such purpose was mainly effectuated by the improper appropriation of its corporate name, thereby frustrating its purpose to secure its reinstatement, since it was not a claim or right in existence prior to dissolution. Columbia Inst. of Radio & Television Broadcasting, Inc. v. Shehyn, 336 F.2d 974 (D.C. Cir. 1964).

Action continued following revocation of articles of incorporation. — A corporation which had its articles of incorporation revoked for failure to pay the required annual report fee could properly maintain an action which was instituted prior to the revocation without paying the annual report fee. M.A.S., Inc. v. Van Curler Broadcasting Corp., 357 F. Supp. 686 (D.D.C. 1976).

§ 29-398. Report of domestic corporation.

(a) Each corporation shall file with the Mayor, on or before April 15th of each fifth year from the date of incorporation, if there has been no change in material facts, a 5-year report setting forth:

(1) The name of the corporation, the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(2) The address, including street and number, if any, of its principal office in the District, if such office is other than its registered office;

(3) The names and respective addresses, including street and number, if any, of its directors and officers;

(4) A brief statement of the character of the business in which the corporation is actually engaged;

(5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and

(6) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class.

(b) Such 5-year report shall be made on forms prescribed and furnished by the Mayor, and the information therein contained shall be given as of the date of the execution of the report.

(c) It shall be executed by the corporation by its president, vice-president, secretary, assistant secretary, or treasurer. (June 8, 1954, 68 Stat. 219, ch. 269, § 98; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 12; 1973 Ed., § 29-932; Sept. 10, 1992, D.C. Law 9-144, § 4(hh), 39 DCR 4863; Sept. 8, 1995, D.C. Law 11-39, § 2(a), 42 DCR 3273.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-39 substituted "of each fifth year from the date of incorporation, if there has been no change in material facts, a 5-year report" for "of each year, an annual report" in (a); and, in (b), substituted "5-year" for "annual."

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Legislative history of Law 9-144. — See note to § 29-358.1.

Legislative history of Law 11-39. — Law 11-39, the "Business Corporation Five-Year Report Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-51, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-72 and transmitted to both Houses of Congress for its review. D.C. Law 11-39 became effective on September 8, 1995.

Construction of Law 11-39. — Section 2(g) of D.C. Law 11-39 provided that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Murphy v. Washington Am. League

Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655 (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959).

§ 29-399. Foreign corporations — Admission to transact business; procurement of certificate of authority limited in certain cases; service of process; rules and regulations.

(a) A foreign corporation shall procure a certificate of authority from the Mayor before it transacts business in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in the District the business of banking, insurance, the acceptance and execution of trusts, the operation of railroads, or building and loan associations, such corporations being admitted to and shall do business in the District pursuant to the laws relating to the business. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state under which the corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter shall be construed to authorize the District to regulate the organization or the internal affairs of such a corporation.

(b) A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of its debts, or the taking of security for the same, or by reason of the appointment of an agent for the solicitation of business not to be transacted in the District, nor for the sale of personal property to the United States within the District unless a contract for the sale is accepted by the seller within the District or the property is delivered from stock of the seller within the District for use within the District.

(c) No foreign corporation authorized to invest in loans secured by real estate, which does not maintain any office, officer, agent, representative, or employees for the purpose of making, maintaining, or liquidating the investment, in the District, shall be subject to the provisions of this chapter; provided that the only activities of the foreign corporation in the District, other than those of a liaison, are one or more of the following:

(1) The acquisition of loans (including the negotiation thereof) secured by mortgages or deeds of trust on real property, including leaseholds, situated in the District pursuant to commitment agreements or arrangements made prior to or following the origination or creation of the loans; provided, however, that nothing herein shall be deemed to permit servicing other than as permitted by paragraph (4) of this subsection;

(2) The physical inspection and appraisal of property in the District as security for mortgages or deeds of trust;

(3) The ownership, modification, renewal, extension, transfer, or foreclosure of the loans, or the acceptance of substitute additional obligors thereon;

(4) Making, collecting, and servicing of loans solely through a person authorized to engage in the District in the business of servicing real estate loans for investors;

(5) Maintaining or defending any action or suit or any administrative or arbitration proceeding arising as a result of the loans;

(6) The acquisition of title to property which is the security for such a loan in the event of default on the loan, either by foreclosure, sale, or agreement in lieu thereof; and

(7) Pending liquidation of its investment within the period, operating, maintaining, renting, or otherwise dealing with, selling or disposing of, real property acquired by foreclosure, sale, or by agreement in lieu thereof.

(c-1) For the purpose of this section, the term "liaison" means a person who does not engage in or make, maintain, or liquidate any investment of the foreign corporation and who is engaged by the foreign corporation solely for the purpose of establishing and maintaining contacts with governments and international bodies and agencies thereof, and arranging conferences for, receiving and furnishing legislative publications and other information or material of interest to, transmitting information for, and arranging transportation or other acccommodations for, officers or other personnel of the foreign corporation within, or to and from, the District.

(d) Nothing in subsection (c) of this section shall be construed as affecting the amenability of a foreign corporation to the service of any process, notice, or demand to which the corporation would be amenable without reference to the provisions of subsection (c) of this section.

(e)(1) Any foreign corporation being exempt from the provisions of this chapter pursuant to subsection (c) of this section shall be deemed to have waived any immunity to service of process and suit in the courts of the District. Any foreign corporation shall appoint and maintain in the District an agent for service of process, and shall register with the Mayor the address of its principal office and the name and address of its agent for service of process in the District, including any changes in addresses.

(2) Whenever any foreign corporation does not have an agent for service of process or the agent cannot be found with reasonable diligence at the agent's registered address, the Mayor shall be the agent for service of process for the corporation. Service of process on the Mayor shall be made by delivery to, and leaving with the Mayor, or with any person having charge of the Mayor's office, duplicate copies of the process, together with a fee of $10. In the event of service to the Mayor, the Mayor shall immediately cause one of the copies to be forwarded by certified or registered mail, addressed to the foreign corporation at its principal office or at its last known address. Service to the Mayor shall be returnable in not less than 30 days, unless the rules of the court issuing the process prescribe another period, in which case the prescribed period shall govern.

(3) Nothing in this subsection shall limit or affect the right to serve any process or notice of demand required or permitted by law to be served on a foreign corporation in any other matter now or hereafter permitted by law.

(4) Any foreign corporation which fails to comply with the requirements of paragraph (1) of this subsection shall be guilty of a misdemeanor and shall be fined not more than $500. Civil fines, penalties, and fees may be imposed as alternative sanctions on any foreign corporation which fails to comply with the

requirements of paragraph (1) of this subsection, or any rules or regulations issued under the authority of this section, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to Chapter 27 of Title 6.

(5) The Council of the District is authorized to issue rules and regulations necessary to carry out the purposes of this subsection. (June 8, 1954, 68 Stat. 219, ch. 269, § 99; Sept. 19, 1966, 80 Stat. 813, Pub. L. 89-591, § 2; 1973 Ed., § 29-933; Mar. 14, 1984, D.C. Law 5-64, § 2(b), 31 DCR 195; Oct. 5, 1985, D.C. Law 6-42, § 441(a), 32 DCR 4450; Sept. 10, 1992, D.C. Law 9-144, § 4(ii), 39 DCR 4863.)

Cross references. — As to exemption of government agencies from fees levied for Mayor acting as registered agent, see § 29-399.51.

Section references. — This section is referred to in §§ 29-399.51 and 31-1609.

Legislative history of Law 5-64. — See note to § 29-399.51.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-144. — See note to § 29-358.1.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(229, 230) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Corporation not precluded from prosecution of litigation. — A foreign corporation which is not authorized to transact business in the District of Columbia is not precluded from maintaining an action for unpaid rents in the District. 3 M Distrib. Corp. v. Rugby Corp., App. D.C., 209 A.2d 790 (1965).

A foreign corporation is not precluded from suing in the District of Columbia by its lack of a certificate of authority to do business in the District. Loe v. Normalair, Ltd., App. D.C., 222 A.2d 643 (1966).

A Pennslyvania corporation engaged in interstate commerce could not be required to obtain a District of Columbia certificate of authority before commencing an action in the District on a promissory note. Lehigh Portland Cement Co. v. Ornstein, 334 F. Supp. 1032 (D.D.C. 1971).

A foreign corporation engaged in interstate commerce, with no offices or warehouse facilities in the District of Columbia, which shipped equipment directly to a buyer in the District, was not "transacting business" in the District, and was not required to secure a certificate of authority prior to maintaining an action on a contract for sale of equipment. Hargrove Displays, Inc. v. Rohe Scientific Corp., App. D.C., 316 A.2d 330 (1974).

When an agent corporation has complied with the applicable certification requirements in order to conduct business in the District, a foreign corporation need not duplicate these efforts merely to maintain an action against the agent corporation, which is its exclusive sales agent. Stock 'In S.A. v. Swissco, Inc., 748 F. Supp. 23 (D.D.C. 1990).

Corporation may be sued in District. — The liability of a foreign corporation to being sued in the District of Columbia does not depend upon its doing business in the District, but depends upon its being found there. Kelberine v. Societe Internationale, 363 F.2d 989 (D.C. Cir.), cert. denied, 385 U.S. 989, 87 S. Ct. 595, 17 L. Ed. 2d 450 (1966).

Federal concessionaire subject to certification requirements. — The Secretary of

the Interior's exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precludes the application to a federal concessionaire of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing, but does not preclude the application of local laws relating to certification of foreign corporations. United States v. District of Columbia, 571 F.2d 651 (D.C. Cir. 1977).

Cited in Dixon v. Stephenson, Inc., 614 F. Supp. 60 (D.D.C. 1985).

§ 29-399.1. Same — Powers, rights, privileges, duties and liabilities.

No foreign corporations subject to the provisions of this chapter shall transact in the District any business for the conduct of which a domestic corporation may not be organized or which is prohibited to a domestic corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (June 8, 1954, 68 Stat. 220, ch. 269, § 100; 1973 Ed., § 29-933a.)

Cited in Indian Lake Estates, Inc. v. Ten Individual Defendants, 350 F.2d 435 (D.C. Cir. 1965), cert. denied, 383 U.S. 947, 86 S. Ct. 1199, 16 L. Ed. 2d 209 (1966).

§ 29-399.2. Same — Corporate name.

No certificate of authority shall be issued to a foreign corporation:

(1) Which has a name the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter. A certificate of authority may be issued to a foreign corporation which has a name the same as, or deceptively similar to, the name of another corporation; however, if the corporation files with the Mayor a resolution of its board of directors adopting a fictitious name for use in transacting business in the District which fictitious name is not the same as, or deceptively similar to, the name of another corporation; provided that a certificate of authority shall not be issued to a foreign corporation which has a name the same as, or deceptively similar to, the name of another corporation, if the foreign corporation engages in the same business as another corporation with the same or deceptively similar name already licensed to do business in the District; and

(2) The name of which does not contain the word "corporation," "company," "incorporated," or "limited," or does not contain an abbreviation of one of these words, unless the corporation, for use in the District adds at the end of its

name one of these words or its abbreviation. (June 8, 1954, 68 Stat. 220, ch. 269, § 101; 1973 Ed., § 29-933b; Sept. 10, 1992, D.C. Law 9-144, § 4(jj), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Judicial review. — Where there were no written regulations or statements of policy governing the determination of whether 1 corporate name is deceptively similar to another, the court, on appeal from the refusal to accept an application to change a corporate name on the ground of deceptive similarities, is required to consider only the validity of the subjective judgment. Eaton Yale & Towne, Inc. v. Goldstein, 335 F. Supp. 1043 (D.D.C. 1971).

§ 29-399.3. Same — Change of corporate name.

Whenever a foreign corporation which is admitted to transact business in the District shall change its name to one under which a certificate of authority to transact business in the District would not be granted to it on application therefor, the authority of such corporation to transact business in the District shall be suspended and it shall not thereafter transact any business in the District until it has changed its name to a name which is available to it under the laws of the District. (June 8, 1954, 68 Stat. 220, ch. 269, § 102; 1973 Ed., § 29-933c.)

§ 29-399.4. Same — Application for certificate of authority; contents.

A foreign corporation may procure a certificate of authority to transact business in the District by making application therefor to the Mayor, which application shall set forth:

(1) The name of the corporation and the state under the laws of which it is organized;

(2) If the name of the corporation does not contain 1 of the words "corporation," "company," "incorporated," "limited," or does not contain an abbreviation of 1 of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in the District;

(3) The date of its incorporation and the period of its duration;

(4) The address, including street and number, if any, of its principal office in the state under the laws of which it is organized;

(5) The address, including street and number, if any, of its proposed registered office in the District, and the name of its proposed registered agent in the District at such address;

(6) A brief statement of the business it proposes to transact in the District;

(7) The names and respective addresses, including street and number, if any, of its directors and officers; and

(8) Any additional information necessary or appropriate to enable the Mayor to determine whether the corporation is entitled to a certificate of authority to transact business in the District. The application shall be made on forms prescribed and furnished by the Mayor and shall be executed in duplicate by the corporation, by its president or a vice-president. (June 8, 1954, 68 Stat. 221, ch. 269, § 103; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 13; 1973 Ed., § 29-933d; Sept. 10, 1992, D.C. Law 9-144, § 4(kk), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.5. Same — Filing of certificate of authority.

(a) There shall be delivered to the Mayor:

(1) Duplicate originals of the application of the corporation for a certificate of authority; and

(2) A certificate of good standing, duly certified by the proper officer of the state wherein it is incorporated.

(b) If, according to law, a certificate of authority to transact business in the District should be issued to such corporation, the Mayor shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such documents the word "Filed," and the month, day, and year of the filing thereof;

(2) File in his office 1 of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto; and

(3) Issue a certificate of authority to transact business in the District, to which he shall affix the other duplicate original application.

(c) The certificate of authority with the duplicate original of the application affixed thereto by the Mayor shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 221, ch. 269, § 104; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 23; 1973 Ed., § 29-933e; Sept. 10, 1992, D.C. Law 9-144, § 4(ll), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.6. Same — Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Mayor, the corporation shall have the right to transact business in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend

or to revoke such right to transact business in the District as provided in this chapter. (June 8, 1954, 68 Stat. 22, ch. 269, § 105; 1973 Ed., § 29-933f.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Lehigh Portland Cement Co. v. Ornstein, 334 F. Supp. 1032 (D.D.C. 1971); Hargrove Displays, Inc. v. Rohe Scientific Corp., App. D.C., 316 A.2d 330 (1974).

§ 29-399.7. Same — Registered office and registered agent.

(a) Each foreign corporation authorized to transact business in the District shall have and continuously maintain in the District:

(1) A registered office which may be, but need not be, the same place as its place of business in the District; and

(2) A registered agent, which agent may be either an individual resident of the District or a corporation authorized by its articles of incorporation to act as agent and authorized to transact business in the District having a business office identical with the registered office. A person or corporation shall not be named by a corporation as its registered agent without the person's or corporation's consent. This consent shall be evidenced by either a written consent executed by the registered agent or by a certificate of the president or vice-president of the foreign corporation certifying that the registered agent has consented. Originals of the written consent or certificate shall be filed with the Mayor.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each foreign corporation shall be as stated in its application for a certificate of authority to transact business in the District. (June 8, 1954, 68 Stat. 222, ch. 269, § 106; 1973 Ed., § 29-933g; Sept. 10, 1992, D.C. Law 9-144, § 4(mm), 39 DCR 4863.)

Section references. — This section is referred to in §§ 26-807 and 26-916.

Legislative history of Law 9-144. — See note to § 29-358.1.

Cited in Wrecking Corp. of Am. v. Jersey Welding Supply, Inc., App. D.C., 463 A.2d 678 (1983).

§ 29-399.8. Same — Change of registered office or registered agent.

(a) A foreign corporation may from time to time change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(b) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing with the Mayor a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office be changed, the address including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent be changed, the name of the successor registered agent and a statement that the successor registered agent has consented to be named as the corporation's registered agent;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by resolution duly adopted by the board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(c) The statement shall be executed in duplicate by the corporation, by its president or a vice-president, and shall be delivered to the Mayor. If the Mayor finds that the statement conforms to the provisions of this chapter, the Mayor shall:

(1) Endorse on each of the duplicate originals the word "filed," and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Return the other duplicate original to the corporation or its representative.

(d) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Mayor.

(e) Any registered agent of a foreign corporation may resign as agent upon executing and delivering written notices to the Mayor and the corporation at its principal office in the state under the laws of which it is organized. The appointment of the agent shall terminate upon the expiration of 30 days after receipt of the notice by the Mayor or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

(f) A registered agent of 1 or more foreign corporations may change the address of the registered office of such foreign corporation or corporations by filing with the Mayor a statement setting forth:

(1) The name of the registered agent;

(2) The present address, including street and number, if any, of such registered agent;

(3) The names of the corporation or corporations represented by such registered agent at such address;

(4) The address, including street and number, if any, to which the office of such registered agent is to be changed; and

(5) The date upon which such change will take place.

(g) The statement shall be executed in duplicate by the registered agent in the agent's individual name, but if the agent is a corporation, domestic or foreign, the statement shall be executed by the corporation, by its president or a vice-president, and delivered to the Mayor. If the Mayor finds that the statement conforms to law, the Mayor shall, when all fees and charges have been paid as prescribed in this chapter:

(1) Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing;

(2) File one of the duplicate originals in the Mayor's office; and

(3) Return the other duplicate original to the registered agent.

(h) The change of address of such registered agent as to each corporation named in such statement shall become effective upon the filing of such statement by the Mayor or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (June 8, 1954, 68 Stat. 222, ch. 269, § 107; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 24; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 14; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(7); 1973 Ed., § 29-933h; Sept. 10, 1992, D.C. Law 9-144, § 4(nn)-(qq), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.9. Same — Service of process; Mayor as agent.

(a) The registered agent so appointed by a foreign corporation authorized to transact business in the District shall be an agent of such foreign corporation upon whom process against such corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to transact business in the District fails to appoint or maintain a registered agent in the District, or whenever any registered agent cannot with reasonable diligence be found at the registered office of the corporation in the District, or whenever the certificate of authority of a foreign corporation shall be revoked, the Mayor shall be an agent of the foreign corporation upon whom any process against the corporation may be served and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service on

the Mayor of any process, notice, or demand shall be made by delivery to and leaving with the Mayor, or with any clerk having charge of the Mayor's office, duplicate copies of the process, notice, or demand and a fee of $10. If any process, notice, or demand is so served, the Mayor shall immediately cause one of the copies to be forwarded by registered or certified mail to the corporation at its principal office in the state under the laws of which it is organized or at its last known address.

(c) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Mayor its agent and representatives upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Mayor, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand and a fee of $10, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail addressed to such corporation at the address given in such affidavit.

(d) The Mayor shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 223, ch. 269, § 108; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 25; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 15; Sept. 3, 1963, 77 Stat. 138, Pub. L. 88-111, § 1(8); 1973 Ed., § 29-933i; Mar. 14, 1984, D.C. Law 5-64, § 2(c), 31 DCR 195; Sept. 10, 1992, D.C. Law 9-144, § 4(rr), 39 DCR 4863.)

Cross references. — As to exemption of government agencies from fees levied for Mayor acting as registered agent, see § 29-399.51.

Section references. — This section is referred to in §§ 26-807, 26-916, and 29-399.51.

Legislative history of Law 5-64. — See note to § 29-399.51.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section does not relate solely to the manner of service but also concerns amenability to service. In re FTC Corporate Patterns Report Litigation, 432 F. Supp. 274 (D.D.C. 1977).

Corporation cannot immunize itself from suit. — A foreign corporation which comes to the District of Columbia for the purpose of filing and prosecuting a suit concerning certain property cannot, by restricting the authority of its resident agent, immunize itself against another suit in the same court involving the same property. Kelberine v. Societe Internationale, 363 F.2d 989 (D.C. Cir.), cert. denied, 385 U.S. 989, 87 S. Ct. 595, 17 L. Ed. 2d 450 (1966).

Complaint dismissed for failure to properly serve Mayor. — Service will be quashed and the complaint dismissed where the plaintiff fails to establish that it complied with this section's requirement of delivering to and leaving with the Mayor, or with any clerk having charge of his office, copies of process. Curtis Bros. v. Thomasville Chair Co., 292 F.2d 774 (D.C. Cir. 1961).

Service on Mayor held valid. — See Central Ins. Agency Co. v. Financial Credit Corp., 222 F. Supp. 627 (D.D.C. 1963); Stevens v. American Serv. Mut. Ins. Co., App. D.C., 234 A.2d 305 (1967).

Corporation was not transacting business in the District. Siam Kraft Paper Co. v. Parsons & Whittemore, Inc., 400 F. Supp. 810 (D.D.C.), aff'd, 521 F.2d 324 (D.C. Cir. 1975).

Cited in Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co., App. D.C., 256 A.2d 913 (1969); Ramamurti v. Rolls-Royce, Ltd., 454 F. Supp. 407 (D.D.C. 1978), aff'd, 612 F.2d 587 (D.C. Cir. 1980); Union Storage Co. v. Knight, App. D.C., 400 A.2d 316 (1979); Wrecking Corp. of Am. v. Jersey Welding Supply, Inc., App. D.C., 463 A.2d 678 (1983).

§ 29-399.10. Same — Amendment to articles of incorporation.

Repealed. Sept. 10, 1992, D.C. Law 9-144, § 4(ss), 39 DCR 4863.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.11. Same — Merger; filing of articles of merger; name change requires new or amended certificate of authority.

Whenever a foreign corporation authorized to transact business in the District shall be a party to a statutory merger permitted by the laws of the state under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Mayor a copy of the articles of merger duly certified by the proper officer of the state under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to transact in the District. (June 8, 1954, 68 Stat. 224, ch. 269, § 110; 1973 Ed., § 29-933k.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.12. Same — Amended certificate of authority.

(a) A foreign corporation authorized to transact business in the District shall secure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Mayor.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Mayor, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority. (June 8, 1954, 68 Stat. 224, ch. 269, § 111; 1973 Ed., § 29-933l.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.13. Same — Annual report; contents.

(a) Each foreign corporation authorized to transact business in the District shall file on or before April 15th of each fifth year from the date of authorization to do business in the District of Columbia, if there has been no change in material facts, a 5-year report setting forth:

(1) The name of the corporation and the state under the laws of which it is organized;

(2) If the name of the corporation does not contain 1 of the words "corporation," "company," "incorporated," or "limited," or does not contain an abbreviation of 1 of such words, then the name of the corporation with the word or abbreviation which it has elected to add thereto for use in the District;

(3) The date of its incorporation and the period of its duration;

(4) The address, including street and number, if any, of its principal office in the state under the laws of which it is organized;

(5) The address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address;

(6) A brief statement of the character of the business in which it is actually engaged in the District; and

(7) The names and respective addresses, including street and number, if any, of its directors and officers.

(b) Such 5-year report shall be made on forms prescribed and furnished by the Mayor and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its

president, vice-president, secretary, assistant secretary, or treasurer, and verified by the officer making the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 224, ch. 269, § 112; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 16; 1973 Ed., § 29-933m; Sept. 8, 1995, D.C. Law 11-39, § 2(b), 42 DCR 3273.)

Effect of amendments. — D.C. Law 11-39, in (a), substituted "of each fifth year from the date of authorization to do business in the District of Columbia, if there has been no change in material facts, a 5-year report" for "of each year with the Mayor an annual report"; and, in (b), substituted "Such 5-year report" for "Such annual report" at the beginning of the first sentence.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Legislative history of Law 11-39. — See note to § 29-398.

Construction of Law 11-39. — See note to § 29-398.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Union Storage Co. v. Knight, App. D.C., 400 A.2d 316 (1979).

§ 29-399.14. Same — Withdrawal from doing business in District.

(a) A foreign corporation authorized to transact business in the District may withdraw from the District upon procuring from the Mayor a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the Mayor an application for withdrawal.

(b) The application for withdrawal shall set forth:

(1) The name of the corporation and the state under the laws of which it is organized;

(2) That it is not transacting business in the District;

(3) That it surrenders its authority to transact business in the District;

(4) That it revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any suit, action, or proceeding based upon any cause of action arising in the District during the time it was authorized to transact business in the District may thereafter be made on such corporation by service thereof on the Mayor;

(5) A post office address to which the Mayor may mail a copy of any process against the corporation that may be served on him; and

(6) Such information as may be necessary or appropriate in order to enable the Mayor to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(c) The application for withdrawal shall be made on forms prescribed and furnished by the Mayor and shall be executed by the corporation, by its president or a vice-president, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by the receiver or trustee. (June 8, 1954, 68 Stat. 225, ch. 269, § 113; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 26; 1973 Ed., § 29-934; Sept. 10, 1992, D.C. Law 9-144, § 4(tt), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Dixon v. Stephenson, Inc., 614 F. Supp. 60 (D.D.C. 1985).

§ 29-399.15. Filing of application for withdrawal; effect of certificate of withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Mayor. Upon receipt thereof he shall examine the same and, if he finds that it conforms to the provisions of this chapter, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

(b) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 225, ch. 269, § 114; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 27; 1973 Ed., § 29-934a.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Dixon v. Stephenson, Inc., 614 F. Supp. 60 (D.D.C. 1985).

§ 29-399.16. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to transact business in the District may be revoked by the Mayor when he finds that:

(1) The certificate of authority of the corporation was procured through fraud practiced upon the District;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter;

(3) The corporation has failed for a period of 90 days to pay any fees, charges, or penalties prescribed by this chapter;

(4) The corporation has failed for 90 days to appoint and maintain a registered agent in the District;

(5) The corporation has failed for 30 days after change of its registered office or registered agent to file with the Mayor a statement of such change;

(6) The corporation has failed to file its 5-year report as required by this chapter;

(7) The corporation for a period of 2 years has not transacted any business in the District;

(8) The corporation has failed to file with the Mayor a duly authenticated copy of each amendment to its articles of incorporation within 30 days after such amendment becomes effective; or

(9) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Mayor unless:

(1) He shall have given the corporation not less than 30 days notice by mail, addressed to such corporation at its principal office as the same appears in the records of the Mayor or at its registered office in the District, of his intent to revoke the certificate of authority; and

(2) The corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or to appoint a registered agent in the District, or to file the required statement of change of registered office or registered agent, or to file such 5-year report, or to file a statement showing that it has transacted business in the District within a period of 2 years, or to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (June 8, 1954, 68 Stat. 226, ch. 269, § 115; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 28; 1973 Ed., § 29-934b; Sept. 8, 1995, D.C. Law 11-39, § 2(c), 42 DCR 3273.)

Effect of amendments. — D.C. Law 11-39 substituted "5-year" for "annual" in (a)(6) and (b)(2).

Legislative history of Law 11-39. — See note to § 29-398.

Construction of Law 11-39. — See note to § 29-398.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Union Storage Co. v. Knight, App. D.C., 400 A.2d 316 (1979); Sartori v. Society of Am. Military Eng'rs, App. D.C., 499 A.2d 883 (1985).

§ 29-399.17. Procedure for issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Mayor shall:

(1) Issue a certificate of revocation in duplicate;

(2) File 1 of such certificates in his office; and

(3) Mail to such corporation at its registered office in the District a notice of such revocation together with the other such certificate.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 226, ch. 269, § 116; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 29; 1973 Ed., § 29-934c.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.18. Effect of revocation or withdrawal upon actions and contracts.

The revocation of certificate of authority or the voluntary withdrawal of a foreign corporation whereby its authority to do business in the District shall cease and be determined, shall not affect any action then pending, nor affect

any right of action upon any contract made by the corporation in the District before such revocation or withdrawal, and, in any action upon any liability or obligation so incurred before the revocation or withdrawal, the process against the corporation may be served, after the filing thereof, upon the Mayor. (June 8, 1954, 68 Stat. 226, ch. 269, § 117; 1973 Ed., § 29-934d.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Certificate of withdrawal does not change status of contracts. — The filing of a certificate of withdrawal by a foreign corporation previously qualified does not change the status that the corporation's contracts had acquired prior to the filing. Indian Lake Estates, Inc. v. Ten Individual Defendants, 350 F.2d 435 (1965), cert. denied, 383 U.S. 947, 86 S. Ct. 1199, 16 L. Ed. 2d 209 (1966).

§ 29-399.19. Application of chapter to foreign corporations transacting business on chapter's effective date.

Foreign corporations transacting business in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within 6 months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this chapter for transacting business without a certificate of authority. (June 8, 1954, 68 Stat. 227, ch. 269, § 118; 1973 Ed., § 29-934e.)

Effective date. — Section 146 of the Act of June 8, 1954, 68 Stat. 179, provided that the effective date of this chapter would be 180 days after June 8, 1954.

§ 29-399.20. Transacting business without certificate of authority; validity of contracts or corporate acts not impaired; liabilities.

(a) No foreign corporation which is subject to the provisions of this chapter and which transacts business in the District without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall an action at law or in equity be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in the

District until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action at law or suit in equity in any court of the District.

(c) A foreign corporation which transacts business in the District without a certificate of authority shall be liable to the District, for the years or parts thereof during which it transacted business in the District without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in the District as required by this chapter and thereafter filed all reports required by this chapter; and in addition thereto it shall be liable for a penalty of not in excess of $500. The Mayor shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (June 8, 1954, 68 Stat. 227, ch. 269, § 119; 1973 Ed., § 29-934f.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Noncompliance with this section is a mere temporary disability which is capable of obviation at any time, and is not absolutely prohibitive of an action of a foreign corporation but is merely suspensory until compliance is achieved. Hill-Lanham, Inc. v. Lightview Dev. Corp., 163 F. Supp. 475 (D.D.C. 1957).

Noncomplying foreign corporation is subject only to disabilities and penalties set forth in this section. A. Tasker, Inc. v. Amsellem, App. D.C., 315 A.2d 178 (1974).

Certificate obtained subsequent to motion filed to dismiss. — A suit brought by a foreign corporation on a contract entered into in the District of Columbia may not be dismissed for failure to qualify as a foreign corporation where the plaintiff obtains a certificate of authority, even though subsequent to the filing of the defendant's motion to dismiss the action. Federal Loose Leaf Corp. v. Woodhouse Stationery Co., 163 F. Supp. 482 (D.D.C. 1958).

Action barred by lack of certificate of authority. — Even if diversity jurisdiction had existed, the plaintiff's apparent failure to comply with the legal requirements necessary to qualify as a foreign corporation doing business in D.C. provided an alternative basis for dismissing the remaining nonfederal claims. ILC Corp. v. Latino Newspaper, Inc., 747 F. Supp. 85 (D.D.C. 1990).

A foreign corporation doing business in the District may not bring an action in any court in the District unless it has obtained a certificate of authority to do business in the District. Telephone & Data Sys. v. American Cellular Network Corp., 966 F.2d 696 (D.C. Cir. 1992).

Action not barred by lack of certificate of authority. — See Loe v. Normalair, Ltd., App. D.C., 222 A.2d 643 (1966).

When an agent corporation has complied with the applicable certification requirements in order to conduct business in the District, a foreign corporation need not duplicate these efforts merely to maintain an action against the agent corporation, which is its exclusive sales agent. Stock 'In S.A. v. Swissco, Inc., 748 F. Supp. 23 (D.D.C. 1990).

Federal courts must apply District's door-closing statute. — A federal court, sit-

ting in diversity in the District, must apply the District's door-closing statute. Telephone & Data Sys. v. American Cellular Network Corp., 966 F.2d 696 (D.C. Cir. 1992).

§ 29-399.21. Mayor; duties and functions.

(a) The Mayor shall be charged with the administration and enforcement of this chapter. Said Mayor is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress.

(b) The Mayor may transfer any or all of the functions vested in him by this chapter to any agent designated by him pursuant to the provisions of this chapter, or to any office or agency established by the Commissioners pursuant to Reorganization Plan No. 5 of 1952.

(c) The Council of the District of Columbia shall provide a distinctive official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear such legend as the Council may determine.

(d) Every certificate and other document or paper executed by the Mayor, in pursuance of any authority conferred upon him by this chapter, and sealed with the seal prescribed by subsection (c) of this section, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by him and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Mayor is authorized to attend and participate in the meetings of national organizations of state officials having supervision over corporations, and of the committees thereof, and there is hereby authorized to be appropriated such sums as may be necessary to defray the expenses of attendance at such meetings and to pay such annual dues or other fees as may be necessary to membership in said organizations. The Mayor is further authorized to visit the corporation departments of the various states when in his judgment such visits are necessary or desirable in connection with the organization or proper conduct of any office or agency established by him.

(f) The Council of the District of Columbia is authorized to make and modify, and the Mayor is authorized to enforce, such regulations as the Council may deem necessary to carry out the provisions of this chapter, the Council is authorized to prescribe penalties for the violation of any such regulations not exceeding a fine of $300 or imprisonment for 90 days, or both, and the Mayor is authorized to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by him as he may deem appropriate. (June 8, 1954, 68 Stat. 227, ch. 269, § 120; 1973 Ed., § 29-935; Mar. 3, 1979, D.C. Law 2-139, § 3205(j), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1 and 29-594.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively.

Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(231, 232) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.22. Fees and charges.

(a) There are imposed on every corporation organized under the laws of the District the following fees and charges:

(1) Fees for filing documents and issuing certificates;

(2) License fees; and

(3) Miscellaneous charges.

(b) The Mayor shall charge the fees as follows:

(1) Filing articles of incorporation, $100;

(2) Filing amendment to articles of incorporation or restated articles of incorporation, $100;

(3) Filing articles of merger or consolidation, $100;

(4) Filing articles of domestication, $100;

(5) Filing a statement of intent to dissolve, $25;

(6) Filing articles of reincorporation, $100;

(7) Filing articles of dissolution, $50;

(8) Filing statement of change of address of registered office or change of registered agent, or both, $25;

(9) Filing statement of the establishment of a series of shares, $25;

(10) Filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, $150;

(11) Filing an application for reservation of a corporate name or for a renewal of reservation, $25;

(12) Filing notice of transfer of a reserved corporate name, $25;

(13) Filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, $100;

(14) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, $100;

(15) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $25;

(16) Filing an application for reinstatement of a domestic or foreign corporation and issuing a certificate of reinstatement, $200;

(17) Furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, $25;

(18) Filing by a registered agent of a corporation of a statement of change of address of the registered agent, $25, plus $10 for each corporation, domestic or foreign, listed in the statement; and

(19) Furnishing a certificate as to the status of a corporation, domestic or foreign, $10, or as to the existence or nonexistence of facts or filings relating to corporations, domestic or foreign, $20.

(c) An initial license fee is hereby imposed as follows:

(1) Every domestic corporation upon the filing of its articles of incorporation shall pay, in addition to any other fees and charges imposed by this chapter, the sum of $.02 for each authorized share of its capital stock up to and including 10,000 shares, and the sum of $.01 for each additional authorized share up to and including 50,000 shares, and the sum of one-half of 1 cent for each additional authorized share in excess of 50,000 shares; provided, that in any case in which the articles of incorporation, of a domestic corporation authorizes par value shares having a par value per share other than $100 per share, then, in respect to such shares only, the aggregate par value of all such shares shall be divided by the figure 100 and the quotient so obtained shall be the number of shares for the purpose of the initial license tax as to such shares; and provided further, that in no case shall the initial license fee payable be less than $20.

(2) Every domestic corporation upon the filing of any amendment of its articles of incorporation effecting an increase of its authorized capital stock, in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (1) of this subsection on the total of the authorized number of shares, including the proposed increase and the initial license fee so computed on the total of the authorized number of shares excluding said increase; provided, that in no case shall the sum payable be less than $10.

(3) Upon filing of articles of consolidation or articles of merger, if the corporation created in the case of articles of consolidation, or the corporation surviving in the case of articles of merger shall be a domestic corporation, then in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (1) of this subsection upon the total of the authorized number of shares of the corporation created by such consolidation or surviving in the case of a merger and the initial license fee so computed upon the aggregate amount of the total authorized number of shares of such of the constituent corporations as are domestic corporations; provided further, that in no case shall the sum payable as an initial license fee be less than $40.

(d) Each foreign or domestic corporation authorized to do business in the District of Columbia or organized, incorporated, or reincorporated under the provisions of this chapter shall pay a 5-year report fee of $500, which shall be paid at the time that the 5-year report, which is required of corporations under the provisions of this chapter, is filed.

(e) If the annual report fee of a domestic corporation is unpaid at the time that it is due, interest shall accrue on the 5-year report fee at the rate of 5% per month until the report fee is paid.

(f) Repealed.

(g) Repealed.

(h) All taxes, fees, and charges provided for in this chapter shall be paid to the Mayor and deposited in the Treasury of the United States to the credit of the District. (June 8, 1954, 68 Stat. 228, ch. 269, § 121; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 30; Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(9); 1973 Ed., § 29-936; Sept. 14, 1976, D.C. Law 1-82, title VII, §§ 701-705, 23 DCR 2461; Sept. 26, 1984, D.C. Law 5-113, § 102, 31 DCR 3974; June 7, 1989, D.C. Law 8-5, § 2, 36 DCR 2654; June 16, 1989, D.C. Law 8-12, § 2, 36 DCR 3371; Sept. 10, 1992, D.C. Law 9-144, § 4(uu), (vv), 39 DCR 4863; Sept. 8, 1995, D.C. Law 11-39, § 2(d), 42 DCR 3273.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-39, in (d), substituted "a 5-year report fee of $500" for "an annual report fee of $100," substituted "the 5-year report" for "the annual report," and deleted the former last sentence; and, in (e), substituted "5-year" for "annual."

Legislative history of Law 1-82. — Law 1-82, the "License Fees and Charges Act of 1976," was introduced in Council and assigned Bill No. 1-237, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 23, 1976 and April 6, 1976, respectively. Signed by the Mayor on June 22, 1976, it was assigned Act No. 1-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-113. — Law 5-113, the "District of Columbia Revenue Act of 1984," was introduced in Council and assigned Bill No. 5-370, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-164 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-5. — Law 8-5, the "District of Columbia Business Corporation Act Amendment Act of 1987," was introduced in Council and assigned Bill No. 8-145, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 14, 1989 and April 4, 1989, respectively. Signed by the Mayor on April 12, 1989, it was assigned Act No. 8-17 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-12. — Law 8-12, the "District of Columbia Business Corporation Act Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-236. The Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-28 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-144. — See note to § 29-358.1.

Legislative history of Law 11-39. — See note to § 29-398.

Application of §§ 4(uu) and 4(vv) of Law 9-144. — Section 6(b) of D.C. Law 9-144 provided that §§ 4(uu) and 4(vv) shall apply on the first day of the second month following September 10, 1992.

Construction of Law 11-39. — See note to § 29-398.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Mayor authorized to issue rules. — See second paragraph of note to § 47-2601.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(233) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.23. Effect of failure to pay 5-year report fee or to file annual report.

If any corporation incorporated or reincorporated under this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for 2 consecutive years fail or refuse to pay any 5-year report fee or fees payable under this chapter, or fail or refuse to file any 5-year report as required by this chapter for 2 consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (June 8, 1954, 68 Stat. 230, ch. 269, § 122; 1973 Ed., § 29-937; Sept. 8, 1995, D.C. Law 11-39, § 2(e), 42 DCR 3273.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-39 substituted "5-year" for "annual" in the heading preceding this section and throughout the section.

Legislative history of Law 11-39. — See note to § 29-398.

Construction of Law 11-39. — See note to § 29-398.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Cited in Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

§ 29-399.24. Proclamation of revocation; effect of publication; extension of term of existence.

(a) On the second Monday in September of each year, the Mayor shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any 5-year report fee or fees or failed or refused to file any 5-year report as required by this chapter for 2 consecutive years next preceding June 30th in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Mayor shall be filed in his office and shall be published once during the month of September in each of 2 general circulation newspapers, published in the District, once every 2 weeks or more frequently.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall proceed to collect its

assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interest.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of 3 years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to collect their assets, convey and dispose of such of their properties as are not to be distributed in kind to their shareholders, pay, satisfy, and discharge their liabilities and obligations and do all other acts required to liquidate their business and affairs, and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, either in cash or in kind among their shareholders according to their respective rights and interests, but not for the purpose of continuing the business for which such corporation shall have been organized; provided, however, that with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within 3 years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued bodies corporate beyond said 3-year period and until any judgments, orders, or decrees therein shall be fully executed. (June 8, 1954, 68 Stat. 230, ch. 269, § 123; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 31; 1973 Ed., § 29-938; Mar. 16, 1982, D.C. Law 4-81, § 3, 29 DCR 156; Apr. 18, 1996, D.C. Law 11-110, § 29(a), 43 DCR 530.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-110 substituted "5-year" for "annual" twice in (a).

Legislative history of Law 4-81. — Law 4-81, the "Newspaper Publication Act of 1981," was introduced in Council and assigned Bill No. 4-323, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Application of Law 4-81. — Section 7 of D.C. Law 4-81 provided that it shall apply to any requirement that the District of Columbia publish notices on or after January 1, 1982.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section preserves the corporate existence for a period of 3 years so that creditors, shareholders, and others, will not be prejudiced by dissolution of the corporate entity. York & York Constr. Co. v. Alexander, App. D.C., 296 A.2d 710 (1972).

Purpose of revocation of articles of incorporation for failure to file annual reports is to prohibit a corporation from enjoying the privileges of the corporate status when it has failed to perform its resultant responsibilities. Accurate Constr. Co. v. Washington, App. D.C., 378 A.2d 681 (1977).

Revocation does not bar previously maintained action. — A corporation which had its articles of incorporation revoked for failure to pay the required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to its revocation without paying annual report fee. M.A.S., Inc. v. Van Curler Broadcasting Corp., 357 F. Supp. 686 (D.D.C. 1973).

Transfer of real property to corporation whose charter is revoked. — A corporation whose charter has been revoked under § 29-587 ceases to be a legal entity, and title to real property cannot pass to it; a subsequent reinstatement of the charter cannot validate an attempted transfer of real property which took place during the period of revocation. Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc., 114 WLR 873 (Super. Ct. 1986).

Cited in Tenants of Minn. Gardens, Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 570 A.2d 1194 (1990).

§ 29-399.25. Carrying on business after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year, or both, in the discretion of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 8, 1954, 68 Stat. 231, ch. 269, § 124; 1973 Ed., § 29-938a; Oct. 5, 1985, D.C. Law 6-42, § 441(b), 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 25, 38 DCR 314.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Legislative history of Law 6-42. — See note to § 29-399.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-399.26. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Mayor that any corporation named in said proclamation has not failed or refused to pay any

5-year report fee or file any 5-year report for 2 consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay 5-year report fees or file reports, the Mayor is authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, into good standing with like effect as if such proclamation or revocation, as to such corporation, had not been issued. (June 8, 1954, 68 Stat. 231, ch. 269, § 125; 1973 Ed., § 938b; Apr. 18, 1996, D.C. Law 11-110, § 29(b), 43 DCR 530.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-110 substituted "5-year" for "annual" throughout the section.

Legislative history of Law 11-110. — See note to § 29-399.24.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.27. Proclaimed corporations — Reservation of name.

The Mayor shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31st of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (June 8, 1954, 68 Stat. 232, ch. 269, § 126; 1973 Ed., § 29-938c.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.28. Same — Procedure for reinstatement.

(a) A corporation, the articles of incorporation or certificate of authority of which have been revoked by proclamation, may at any time after the date of the issuance of the proclamation of revocation deliver to the Mayor a petition for reinstatement, in duplicate, accompanied by the delinquent 5-year report or reports, or payment of delinquent 5-year report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Mayor after the period for reservation of the name has expired and if he finds that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of subsection (a) of this section, the proclaimed corporation shall set forth in its petition for reinstatement its name at the time of issuance of the proclamation of revocation and its new name, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) If the Mayor finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, they shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals and any such 5-year report or reports the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals and any such 5-year report or reports in his office;

(3) Issue a certificate of reinstatement to which he shall affix the other duplicate original; and

(4) Deliver such certificate of reinstatement and other duplicate original to the corporation or its representative.

(d) Upon the issuance of the certificate of reinstatement, the revocation proceedings theretofore taken as to such corporation by proclamation shall be deemed to be annulled, and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (June 8, 1954, 68 Stat. 232, ch. 269, § 127; Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(10); 1973 Ed., § 29-938d; Apr. 18, 1996, D.C. Law 11-110, § 29(c), 43 DCR 530.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-110 substituted "5-year" for "annual" twice in (a) and once in (c)(1) and (2).

Legislative history of Law 11-110. — See note to § 29-399.24.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Construed similarly to § 29-591. — Although it is not identical, the language in this section governing the reinstatement of charters of for-profit corporations is not materially different from § 29-591 which governs the reinstatement of charters of nonprofit corporations; thus, the two sections should be construed similarly. Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

Reinstatement does not validate property transfer attempted during revocation. — A corporation whose charter has been revoked under § 29-587 ceases to be a legal entity, and title to real property cannot pass to it; a subsequent reinstatement of the charter cannot validate an attempted transfer of real property which took place during the period of revocation. Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc., 114 WLR 873 (Super. Ct. 1986).

Corporation could not apply to have its previously revoked charter reinstated so as to validate its deed retroactively, thereby insulating the property in question from the lien of a creditor pursuing its agent. Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

Cited in Accurate Constr. Co. v. Washington, App. D.C., 378 A.2d 681 (1977).

§ 29-399.29. Penalties — Failure to file 5-year report on time.

Any corporation organized under this chapter or any foreign corporation having a certificate of authority under this chapter which fails or refuses to file the 5-year report required by this chapter to be filed on April 15th of each year shall pay a penalty of $25. (June 8, 1954, 68 Stat. 232, ch. 269, § 128; 1973 Ed., § 29-939; Sept. 8, 1995, D.C. Law 11-39, § 2(f), 42 DCR 3273.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Effect of amendments. — D.C. Law 11-39 substituted "5-year" for "annual" in the heading preceding this section and once in the section.

Legislative history of Law 11-39. — See note to § 29-398.

Construction of Law 11-39. — See note to § 29-398.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

§ 29-399.30. Same — Failure to maintain registered office or registered agent.

Any corporation incorporated or reincorporated under this chapter, or any foreign corporation which has been issued a certificate of authority under this chapter, which fails or refuses to maintain a registered office or a registered agent in the District of Columbia, in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined in an amount not exceeding $500. Civil fines, penalties, and fees may be imposed as alternative sanctions on any corporation or foreign corporation which fails or refuses to maintain a registered office or a registered agent in the District of Columbia in accordance with the provisions of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 8, 1954,

68 Stat. 232, ch. 269, § 129; 1973 Ed., § 29-940; Oct. 5, 1985, D.C. Law 6-42, § 441(c), 32 DCR 4450.)

Section references. — This section is referred to in §§ 29-101 and 29-214.

Legislative history of Law 6-42. — See note to § 29-399.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-399.31. Same — Nonpayment of fees.

(a) The Mayor shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to him or while the corporation is in default in the payment of any fees, charges, or penalties herein provided to be paid by or assessed against it. Nothing in this section shall prevent the filing, without the payment of all such fees, charges and penalties, of a written notice of resignation by a registered agent of a corporation, domestic or foreign.

(b) No corporation required to pay a fee, charge, or penalty under this chapter shall maintain in the District of Columbia any action at law or suit in equity until all such fees, charges, and penalties have been paid in full. (June 8, 1954, 68 Stat. 232, ch. 269, § 130; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 32; Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(11); 1973 Ed., § 29-941.)

Section references. — This section is referred to in §§ 29-101 and 29-213.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Intent of section. — This section was not intended to apply to a corporation whose articles of incorporation have been revoked for failure to pay annual report fees. M.A.S., Inc. v. Van Curler Broadcasting Corp., 357 F. Supp. 686 (D.D.C. 1973).

Effect of subsection (b). — Subsection (b) of this section does not foreclose reinstatement once the required corporate fees are paid, nor does it require immediate dismissal when nonpayment is brought to the court's attention. York & York Constr. Co. v. Alexander, App. D.C., 296 A.2d 710 (1972).

§ 29-399.32. Same — Noncompliance with provisions of chapter.

Any person, or corporation, who violates any provision of this chapter, or fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not exceeding $500

for each and every violation or failure. Civil fines, penalties, and fees may be imposed as alternative sanctions on any person or corporation who commits an infraction of any provisions of this chapter or fails to comply with any provisions thereof, for which infraction or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction or failure shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 8, 1954, 68 Stat. 233, ch. 269, § 131; 1973 Ed., § 29-942; Oct. 5, 1985, D.C. Law 6-42, § 441(d), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-399.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-399.33. Rights and immunities of witnesses.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury; provided further, that the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 8, 1954, 68 Stat. 233, ch. 269, § 132; 1973 Ed., § 29-943.)

§ 29-399.34. Monopolies and restraint of trade.

Nothing in this chapter shall be interpreted to authorize a corporation to do any act in violation of the common law or the statutes relating to the District of Columbia or of the United States with respect to monopolies and illegal restraint of trade. (June 8, 1954, 68 Stat. 233, ch. 269, § 133; 1973 Ed., § 29-944.)

§ 29-399.35. Waiver of notice.

Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. (June 8, 1954, 68 Stat. 233, ch. 269, § 134; 1973 Ed., § 29-945.)

Section references. — This section is referred to in §§ 29-326 and 29-339.

§ 29-399.36. Voting requirements of articles of incorporation.

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (June 8, 1954, 68 Stat. 233, ch. 269, § 135; 1973 Ed., § 29-946.)

§ 29-399.37. Requirements of action without meeting.

Any action required or permitted to be taken at a meeting of the shareholders of a corporation or of the board of directors or of any committee thereof may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, or by all of the members of the board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the shareholders or the board or the committee. Such consent shall have the same force and effect as a unanimous vote of the shareholders or the board or the committee, as the case may be, and may be stated as such in any article or document filed with the Mayor under this chapter. (June 8, 1954, 68 Stat. 234, ch. 269, § 136; Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(12); 1973 Ed., § 29-947.)

Section references. — This section is referred to in § 29-399.68.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.38. Procedures for appeal.

(a) If the Mayor shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Mayor before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court, by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Mayor; whereupon the matter shall be tried de novo by the court, and the court shall

either sustain the action of the Mayor or direct him to take such action as the court may deem proper.

(b) If the Mayor shall revoke the certificate of authority to transact business in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation, may likewise appeal to the court, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in the District and a copy of the notice of revocation given by the Mayor; whereupon the matter shall be tried de novo by the court and the court shall either sustain the action of the Mayor or direct him to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the court under this section may be taken by either party to the proceeding within 60 days after service on the party of a copy of the order or judgment of the court. (June 8, 1954, 68 Stat. 234, ch. 269, § 137; July 29, 1970, 84 Stat. 582, Pub. L. 91-358, title I, §§ 163(b), 168(c)(3); 1973 Ed., § 29-948.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Judicial review. — Where there were no written regulations governing the determination of whether 1 corporate name was deceptively similar to another, the court, on trial de novo following an appeal from the refusal to accept an application to change the corporate name on the ground of deceptive similarities, is required to consider only the validity of the subjective judgment. Eaton Yale & Towne, Inc. v. Goldstein, 335 F. Supp. 1043 (D.D.C. 1971).

§ 29-399.39. Certificates and certified copies of certain documents to be received in evidence.

All certificates issued by the Mayor in accordance with the provisions of this chapter, and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Mayor under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (June 8, 1954, 68 Stat. 234, ch. 269, § 138; 1973 Ed., § 29-949.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Annual report properly admitted. — In a prosecution for keeping a bawdy or disorderly house, a copy of the annual report of the corporate owner of the premises, as filed with the Recorder of Deeds, listing defendant as president, treasurer and 1 of the directors of corporation was properly admitted. Raleigh v. United States, App. D.C., 351 A.2d 510 (1976).

§ 29-399.40. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (June 8, 1954, 68 Stat. 235, ch. 269, § 139; 1973 Ed., § 29-950.)

Generally. — For case discussing liability of persons acting as a corporation where attempt to incorporate failed, see Womack v. Stephens, 115 WLR 305 (Super. Ct. 1987).

Foreign corporation not qualified to do business in District. — The fact that a foreign corporation does not qualify to do business within the District of Columbia does not entitle creditor of the corporation to maintain a suit against individual officers of corporation. A. Tasker, Inc. v. Amsellem, App. D.C., 315 A.2d 178 (1974).

§ 29-399.41. Forms to be furnished by Mayor.

All reports required by this chapter to be filed in the Office of the Mayor shall be made on forms which shall be prescribed and furnished by the Mayor. Forms for all other documents to be filed in the Office of the Mayor shall be furnished by the Mayor on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (June 8, 1954, 68 Stat. 235, ch. 269, § 140; 1973 Ed., § 29-951.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.42. Reincorporation or incorporation of existing corporations.

(a) Any corporation which is organized and existing under the laws of the District of Columbia on July 1, 1978, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the

provisions of this chapter and may become reincorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter, setting forth the proposed articles of reincorporation, and directing that such proposed reincorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation; and it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless 2 or more classes of shares are issued, in which event it shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class issued.

(b) Upon receiving approval, the articles of reincorporation shall be executed in duplicate by the corporation, by its president or a vice-president, and shall set forth:

(1) The name (which may be different from its existing name) under which the corporation elects to be reincorporated and which shall be subject to the other provisions of this chapter;

(2) The address, including street and number, if any, of its registered agent in the District of Columbia, and the name of its registered office at the address;

(3) The period of duration, which may be perpetual and which may be different from its existing period of duration;

(4) The purpose or purposes (which may be different from its existing purposes) which it will hereafter carry on, and which shall not include any purpose prohibited to a corporation organized under this chapter;

(5) The aggregate number of shares which the corporation was authorized to issue, and, if the shares were of 1 class only, the par value of each of the shares, or a statement that all were without par value, as the case may be; or if the shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that the shares were without par value;

(6) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(7) Any other provision, not inconsistent with law or this chapter (whether or not included in its existing certificate of incorporation), for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) The number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment

of the board that the corporation should be reincorporated under the provisions of this chapter in the manner set forth in the articles of reincorporation;

(9) A statement that the corporation elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this chapter;

(10) The aggregate number of shares of each class outstanding; and

(11) The number of shares of each class voted for and against the reincorporation.

(c) It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of reincorporation is inconsistent with a bylaw, the provision of the articles of reincorporation shall be controlling.

(d) Duplicate originals of the articles of reincorporation shall be delivered to the Mayor. If the Mayor finds that the articles of reincorporation conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of reincorporation to which he shall affix the other duplicate original; and

(4) Deliver such certificate of reincorporation and other duplicate original to the corporation or its representative.

(e) Any corporation which is created under the provisions of a special act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this chapter may avail itself of the provisions of this chapter and may become incorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated hereunder, and directing that such proposed incorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice of such proposed incorporation shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed incorporation; and it shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares, unless 2 or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares of each class issued.

(f) Upon approval being given by the shareholders, a statement of incorporation shall be executed in duplicate by the corporation, by its president or a vice-president, and shall set forth:

(1) The name of the corporation, which shall contain the word "corporation", "company", "incorporated", or "limited", or shall end with an abbreviation of one of those words;

(2) The address, including street and number, if any, of its registered office in the District of Columbia, and name of its registered agent at that address;

(3) The purpose or purposes for which the corporation was organized and for which it will hereafter carry on;

(4) The aggregate number of shares which the corporation was authorized to issue and, if the shares were of 1 class only, the par value of each of the shares, or a statement that all were without par value, as the case may be; or if the shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each class or that the shares were without par value;

(5) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(6) A statement that the corporation elects to avail itself of the provisions of this chapter and become incorporated hereunder;

(7) The number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated thereunder; and

(8) A statement that the shareholders approved the statement of incorporation in accordance with the corporation's articles of incorporation and applicable law.

(g) It shall not be necessary to set forth in the statement of incorporation any of the corporate powers enumerated in this chapter.

(h) Duplicate originals of the statement of incorporation shall be delivered to the Mayor, together with a copy of the corporation's charter of articles or certificate of incorporation then in effect, certified by the secretary of the corporation. If the Mayor finds that the statement of incorporation conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office, together with said copy of the corporation's charter or articles or certificate of incorporation as then in effect;

(3) Issue a certificate of incorporation to which he shall affix the other duplicate originals; and

(4) Deliver such certificate of incorporation and other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 235, ch. 269, § 141; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 33; 1973 Ed., § 29-952; Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509; Sept. 10, 1992, D.C. Law 9-144, § 4(ww), (xx), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-320 and 29-399.43.

Legislative history of Law 2-117. — See note to § 29-303.

Legislative history of Law 9-144. — See note to § 29-358.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.43. Effect of issuance of certificate of reincorporation or incorporation.

Upon the issuance under § 29-399.42 of a certificate of reincorporation or of incorporation, as the case may be, by the Mayor the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under § 29-399.42 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation; and the corporation shall be entitled to and be possessed of all the privileges, franchises, and powers and subject to all the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved, and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; provided, however, that any corporation thus reincorporating or incorporating under the provisions of this chapter shall be subject to all the contracts, debts, claims, duties, liabilities, and obligations of the corporations thus reincorporated or incorporated as if such reincorporation or incorporation had not taken place and neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such reincorporation or incorporation. Such reincorporated or incorporated corporation shall not be subject to the payment of the initial license tax provided by this chapter. (June 8, 1954, 68 Stat. 237, ch. 269, § 142; Sept. 2, 1957, 71 Stat. 574, Pub. L. 85-254, § 34; 1973 Ed., § 29-952a.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section was intended to place a pre-existing corporation on equality with one newly organized, so far as benefits and burdens under

this chapter were concerned, but without depriving a preexisting corporation of that which it already had. Murphy v. Washington Am. League Baseball Club, Inc., 167 F. Supp. 215 (D.D.C. 1958), aff'd, 267 F.2d 655, (D.C. Cir.), cert. denied, 361 U.S. 837, 80 S. Ct. 89, 4 L. Ed. 2d 77 (1959).

§ 29-399.44. Duties of Recorder of Deeds transferred to Mayor.

(a) All powers conferred and all duties imposed upon the Recorder of Deeds of the District of Columbia by any act of Congress in relation to the organization of corporations, the amendment of certificates of incorporation or charters of corporations, change in capital stock, change of name, reincorporation, dissolution, or other corporate action are on December 5, 1954, hereby transferred to, imposed upon, and shall be exercised or performed by the Mayor; and wherever the words "Recorder of Deeds" or other words denoting that officer appear in any of the acts of Congress relating to the organization of corporations under the laws of the District of Columbia, or to amendments to the certificate of incorporation or charter of any corporation organized and existing under any of such acts, or to changes of name, changes of capital stock, reincorporation, dissolution, or other corporate action of any such corporation, whether such words relate to the powers and duties of such officer in relation to organization of corporations under any such acts, or to any of the corporate acts hereinbefore enumerated or are used in connection with the imposition of obligations or duties or the conferring of rights or privileges upon corporations or other persons, such words shall be construed to mean the Mayor. All fees and charges, except as hereinafter provided, now chargeable by the Recorder of Deeds for doing the work or performing the services hereby transferred to the Mayor shall, after December 5, 1954, be chargeable by the Mayor. On and after December 5, 1954, all certificates of incorporation or charters for the organization of corporations under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or for the amendment of any such certificate of incorporation or charter, changes in capital stock, reincorporation, dissolution, or other corporate action under any such chapter, shall be delivered to the Mayor in duplicate original. If the Mayor finds that any such document conforms to law, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on each such duplicate original the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

(b) The filing of such document in the office of the Mayor shall have the same force and effect as the recordation or lodging for recordation of certificates of incorporation and other corporate documents hereinbefore enumerated, formerly had in the office of the Recorder of Deeds.

(c) On December 5, 1954, the Mayor shall take possession of all original books, papers, and records theretofore filed, recorded, used, or acquired by the Recorder of Deeds in the exercise of the powers and in the performance of the

duties hereby transferred to the Mayor, but nothing herein contained shall require the Recorder of Deeds to transfer any copies or transcripts of corporate papers that may constitute part of the records of his office. (June 8, 1954, 68 Stat. 238, ch. 269, § 143; Sept. 2, 1957, 71 Stat. 575, Pub. L. 85-254, § 35; 1973 Ed., § 29-953.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.45. Severability of provisions.

The invalidity of any portion of this chapter shall not affect the validity of any other portion thereof which can be given effect without such invalid part. (June 8, 1954, 68 Stat. 238, ch. 269, § 144; 1973 Ed., § 29-954.)

§ 29-399.46. Reservation of right to alter, amend or repeal.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (June 8, 1954, 68 Stat. 238, ch. 269, § 145; 1973 Ed., § 29-955.)

§ 29-399.47. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (June 8, 1954, 68 Stat. 239, ch. 269, § 147; 1973 Ed., § 29-956.)

§ 29-399.48. Use of certified mail.

Wherever provision of this chapter authorizes or requires the service or forwarding of any process, notice, or demand by registered mail, such provision shall be deemed to include as an alternative the service or forwarding of such process, notice, or demand by certified mail. (June 8, 1954, ch. 269, § 148; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17; 1973 Ed., § 29-957.)

Cross references. — As to certified mail receipts being prima facie evidence of delivery, see § 14-506.

§ 29-399.49. Civil actions and prosecutions.

All civil actions under this chapter which the Mayor is authorized to commence, and all prosecutions for violations of the provisions of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 8, 1954, ch. 269, § 149; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17; 1973 Ed., § 29-958; Oct. 5, 1985, D.C. Law 6-42, § 441(e), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-399.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.50. Verification no longer required; penalty for misstatement of fact.

(a) The signature of the person or persons signing an instrument delivered to the Mayor shall constitute the affirmation or acknowlegment of the signatory, under penalties of perjury, that the instrument is the act and deed of the person or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

(b) A person who signs any instrument delivered to the Mayor pursuant to this chapter knowing it to contain a misstatement of fact shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500, or by imprisonment not exceeding 1 year, or both.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions on any person who signs any instrument delivered to the Mayor pursuant to this chapter knowing it to contain a misstatement of fact, pursuant to Chapter 27 of Title 6. Adjudication of any civil infraction of this chapter shall be pursuant to Chapter 27 of Title 6. (June 8, 1954, ch. 269, § 151; Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(13); 1973 Ed., § 29-959; Oct. 5, 1985, D.C. Law 6-42, § 441(f), 32 DCR 4450; Sept. 10, 1992, D.C. Law 9-144, § 4(yy), 39 DCR 4863.)

Legislative history of Law 6-42. — See note to § 29-399.

Legislative history of Law 9-144. — See note to § 29-358.1.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-399.51. Exemption of government agencies from fees levied for Mayor as registered agent.

(a) The agencies of the United States Government and the District of Columbia government are exempt from the fees levied for the Mayor acting as a registered agent pursuant to §§ 29-312(b), 29-399(e)(2), and 29-399.9.

(b) In order to qualify for the exemption provided in subsection (a) of this section, the United States government shall pay all postage costs incurred on its behalf pursuant to §§ 29-312(b), 29-399(e)(2), and 29-399.9. (June 8, 1954, ch. 269, § 152, as added Mar. 14, 1984, D.C. Law 5-64, § 2(d), 31 DCR 195.)

Cross references. — As to service of process upon registered agent of business corporation, see § 29-312.

As to amenability of foreign corporation to service of process, see § 29-399.

As to Mayor as agent for foreign corporation, see § 29-399.9.

Legislative history of Law 5-64. — Law 5-64, the "Mayoral Agent for Service of Process Fee Increase Act of 1983," was introduced in Council and assigned Bill No. 5-91, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 20, 1983, and January 3, 1984, respectively. Signed by the Mayor on January 11, 1984, it was assigned Act No. 5-97 and transmitted to both Houses of Congress for its review.

§ 29-399.52. Domestication.

(a) Any qualified foreign business corporation may become a domestic corporation by filing articles of domestication with the Mayor. The articles of domestication, upon being filed with the Mayor, shall constitute the articles of the domesticated foreign corporation, and it shall thereafter continue as a corporation which shall be a domestic corporation subject to this chapter.

(b) The articles of domestication shall be executed by the corporation and shall set forth in the English language:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its registered office in the District;

(3) A statement that upon domestication the corporation will be subject to the domestic corporation provisions of Chapter 3 of this title, and, if desired, a brief statement of the purpose or purposes for which it is to be domesticated which shall be a purpose or purposes for which a domestic corporation may be incorporated under this chapter and which may consist of or include a statement that the corporation shall have unlimited power to engage in and to do any lawful act concerning any and all lawful business for which corporations may be incorporated under Chapter 3 of this title;

(4) The term for which, upon domestication, it is to exist, if not perpetual;

(5) Any desired provisions relating to the manner and basis of reclassifying the shares of the corporation;

(6) A statement that the filing of articles of domestication and the renunciation of the original charter or articles of the corporation has been advised by the board of directors and approved by the shareholders in accordance with the corporation's articles of incorporation and applicable law;

(7) Any desired provisions regarding special treatment of shares held by any shareholder or group of shareholders if the laws of the jurisdiction under which the corporation was incorporated prior to its domestication permit the special treatment; and

(8) Any other provisions authorized by this chapter to be set forth in the original articles of incorporation. (June 8, 1954, ch. 269, § 153, as added Sept. 10, 1992, D.C. Law 9-144, § 4(zz), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.53. Effect of domestication.

As a domestic corporation, the domesticated corporation shall no longer be a foreign corporation for the purposes of this chapter and shall have all the powers and privileges and be subject to all the duties and limitations granted and imposed upon domestic corporations. The property, franchises, debts, liens, estates, taxes, penalties, and public accounts due the District shall continue to be vested in and imposed upon the corporation to the same extent as if it were the successor by merger of the domesticating corporation with and into a domestic corporation. The shares of the domesticated corporation shall be unaffected by the domestication except to the extent, if any, they are reclassified in the articles of domestication. (June 8, 1954, ch. 269, § 154, as added Sept. 10, 1992, D.C. Law 9-144, § 4(aaa), 39 DCR 4863.)

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.54. Close corporations — Law applicable to close corporations.

(a) Sections 29-399.54 through 29.399.69 apply to all close corporations, as defined in § 29-399.55. Unless a corporation elects to become a close corporation under these sections in the manner prescribed in these sections, it shall be subject in all respects to the provisions of this chapter, except the provisions of §§ 29-399.54 through 29-399.69.

(b) All provisions of this chapter shall be applicable to all close corporations, as defined in § 29-399.55, except insofar as §§ 29-399.54 through 29-399.69 otherwise provide. (June 8, 1954, ch. 269, § 155, as added Sept. 10, 1992, D.C. Law 9-144, § 4(bbb), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.58 and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.55. Same — Close corporation defined; contents of articles of incorporation.

(a) A close corporation is a corporation organized under this chapter whose articles of incorporation contain the provisions required by § 29-347, and, in addition, provide that:

(1) All of the corporation's issued stock of all classes, exclusively of treasury shares, shall be represented by certificates and shall be held of record by not more than a specified number of persons, not exceeding 35;

(2) All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by § 29-320; and

(3) The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933 (15 U.S.C. § 77a et seq.), as it may be amended from time to time.

(b) The articles of incorporation of a close corporation may set forth the qualifications of shareholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class, or both.

(c) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entirety shall be treated as held by 1 shareholder. (June 8, 1954, ch. 269, § 156, as added Sept. 10, 1992, D.C. Law 9-144, § 4(ccc), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.56, 29-399.57, 29-399.58, 29-399.59, 29-399.60, 29-399.61, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.56. Same — Formation of a close corporation.

A close corporation shall be formed in accordance with §§ 29-346 through 29-348, except that:

(1) Its articles of incorporation shall contain a heading stating the name of the corporation and that it is a close corporation; and

(2) Its articles of incorporation shall contain the provisions required by § 29-399.55. (June 8, 1954, ch. 269, § 157, as added Sept. 10, 1992, D.C. Law 9-144, § 4(ddd), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.57. Same — Election of existing corporation to become a close corporation.

Any corporation organized under this chapter may become a close corporation by executing and filing, in accordance with §§ 29-356 and 29-357, articles of amendment of its articles of incorporation which shall contain a statement that it elects to become a close corporation, the provisions required by

§ 29-399.55 to appear in the articles of incorporation of a close corporation, and a heading stating the name of the corporation and that it is a close corporation. The amendment shall be adopted in accordance with the requirements of § 29-353 or § 29-354, except that it must be approved by a vote of the holders of record of at least two-thirds of the shares of each class of stock of the corporation which are outstanding. (June 8, 1954, ch. 269, § 158, as added Sept. 10, 1992, D.C. Law 9-144, § 4(eee), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.58. Same — Limitations on continuation of close corporation status.

A close corporation continues to be a close corporation and to be subject to §§ 29-399.54 through 29-399.69 until:

(1) If files with the Mayor articles of amendment deleting from its articles of incorporation the provisions required or permitted by § 29-399.54 to be stated in the articles of incorporation to qualify it as a close corporation; or

(2) Any one of the provisions or conditions required or permitted by § 29-399.55 to be stated in the articles of incorporation to qualify a corporation as a close corporation has in fact been breached and neither the corporation nor any of its shareholders takes the steps required by § 29-399.61 to prevent the loss of status or to remedy such a breach. (June 8, 1954, ch. 269, § 159, as added Sept. 10, 1992, D.C. Law 9-144, § 4(fff), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.59. Same — Voluntary termination of close corporation status by amendment of articles of incorporation; vote required.

(a) A corporation may voluntarily terminate its status as a close corporation and cease to be subject to §§ 29-399.55 through 29-399.69 by amending its articles of incorporation to delete the additional provisions required or permitted by § 29-399.55 to be stated in the articles of incorporation of a close corporation. Such an amendment shall be adopted and shall become effective in accordance with § 29-354, except that it must be approved by a vote of the holders of record of at least two-thirds of the shares of each class of stock of the corporation which are outstanding.

(b) The articles of incorporation of a close corporation may provide that on any amendment to terminate its status as a close corporation, a vote greater than two-thirds of the shares of each class of stock of the corporation which are outstanding or a vote of all shares of any class shall be required; and if the articles of incorporation contain such a provision, that provision shall not be amended, repealed, or modified by any vote less than that required to

terminate the corporation's status as a close corporation. (June 8, 1954, ch. 269, § 160, as added Sept. 10, 1992, D.C. Law 9-144, § 4(ggg), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.61, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.60. Same — Issuance or transfer of stock of a close corporation in breach of qualifying conditions.

(a) If stock of a close corporation is issued or transferred to any person who is not entitled under any provision of the articles of incorporation permitted by § 29-399.55(b) to be a holder of record of stock of the corporation, and if the certificate for the stock conspiciously notes the qualifications of the persons entitled to be holders of record thereof, the person is conclusively presumed to have notice of the fact of his or her ineligibility to be a shareholder.

(b) If the articles of incorporation of a close corporation state the number of persons, not in excess of 35, who are entitled to be holders of record of its stock, and if the certificate for the stock conspicuously states such a number, and if the issuance or transfer of stock to any person would cause the stock to be held by more than that number of persons, the person to whom the stock is issued or transferred is conclusively presumed to have notice of this fact.

(c) If a stock certificate of any close corporation conspicuously notes the fact of a restriction on transfer of stock of the corporation, and the restriction is permitted by § 29-320, the transferee of the stock is conclusively presumed to have notice of the fact that he or she has acquired stock in violation of the restriction, if the acquisition violates the restriction.

(d) Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (i) that he or she is a person not eligible to be a holder of stock of the corporation, (ii) that transfer of stock to him or her would cause the stock of the corporation to be held by more than the number of persons permitted by its articles of incorporation to hold stock of the corporation, or (iii) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation may, at its option, refuse to register transfer of the stock into the name of the transferee.

(e) The provisions of subsection (d) of this section shall not be applicable if the transfer of stock, even though otherwise contrary to subsection (a), (b), or (c) of this section, has been consented to by all the stockholders of the close corporation.

(f) The term "transfer", as used in this section, is not limited to a transfer for value.

(g) The provisions of this section do not in any way impair any rights of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty, express or implied. (June 8, 1954, ch. 269, § 161, as added Sept. 10, 1992, D.C. Law 9-144, § 4(hhh), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, 29-399.61, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.61. Same — Involuntary termination of close corporation status; proceeding to prevent loss of status.

(a) If any event occurs as a result of which one or more of the provisions or conditions included in a close corporation's articles of incorporation pursuant to § 29-399.55 to qualify it as a close corporation has been breached, the corporation's status as a close corporation shall terminate unless:

(1) Within 30 days after the occurrence of the event, or within 30 days after the event has been discovered, whichever is later, the corporation files with the Mayor a certificate, executed in duplicate by the corporation, by its president or a vice-president, stating that a specified provision or condition included in its articles of incorporation pursuant to § 29-399.55 to qualify it as a close corporation has ceased to be applicable, and furnishes a copy of the certificate to each shareholder; and

(2) The corporation concurrently with the filing of the certificate takes the steps necessary to correct the situation which threatens its status as a close corporation, including, without limitation, the refusal to register the transfer of stock which has been wrongfully transferred as provided by § 29-399.60, or a proceeding under subsection (b) of this section.

(b) A court of equity, upon the suit of the corporation or any shareholder, shall have jurisdiction to issue all orders necessary to prevent the corporation from losing its status as a close corporation, or to restore its status as a close corporation by enjoining or setting aside any act or threatened act on the part of the corporation or a shareholder which would be inconsistent with any of the provisions or conditions required or permitted by § 29-399.55 to be stated in the articles of incorporation of a close corporation, unless it is an act approved in accordance with § 29-399.59. The court may enjoin or set aside any transfer or threatened transfer of stock of a close corporation or of any transfer restriction permitted by § 29-320 and may enjoin any public offering, as defined in § 29-399.55, or threatened public offering of stock of the close corporation. (June 8, 1954, ch. 269, § 162, as added Sept. 10, 1992, D.C. Law 9-144, § 4(iii), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.62. Same — Corporation option where a restriction on transfer of a security is held invalid.

If a restriction on transfer of a security of a close corporation is held not to be authorized by § 29-320, the corporation shall nevertheless have an option, for a period of 30 days after the judgment setting aside the restriction becomes final, to acquire the restricted security at a price which is agreed upon by the

parties, or if no agreement is reached as to price, then at the fair value as determined by the court. In order to determine fair value, the court may appoint an appraiser to receive evidence and report to the court findings and recommendation as to fair value. (June 8, 1954, ch. 269, § 163, as added Sept. 10, 1992, D.C. Law 9-144, § 4(jjj), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.63. Same — Agreements restricting discretion of directors.

A written agreement among the shareholders of a close corporation holding a majority of the outstanding stock entitled to vote, whether solely among themselves or with a party not a shareholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of such an agreement shall be to relieve the directors and impose upon the shareholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such an agreement. (June 8, 1954, ch. 269, § 164, as added Sept. 10, 1992, D.C. Law 9-144, § 4(kkk), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.64. Same — Management by shareholders.

(a) The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the shareholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

(1) No meeting of shareholders need to be called to elect directors;

(2) Unless the context clearly requires otherwise, the shareholders of the corporation shall be deemed to be directors for purposes of applying provisions of this chapter; and

(3) The shareholders of the corporation shall be subject to all liabilities of directors.

(b) Such a provision may be inserted in the articles of incorporation by amendment if all holders of record of all of the outstanding stock, whether or not having voting power, authorize such a provision. An amendment to the articles of incorporation to delete such a provision shall be adopted by a vote of the holders of a majority of all outstanding stock of the corporation, whether or not otherwise entitled to vote. If the articles of incorporation contain a provision authorized by this section, the existence of the provision shall be noted conspicuously on the face or back of every stock certificate issued by the

corporation. (June 8, 1954, ch. 269, § 165, as added Sept. 10, 1992, D.C. Law 9-144, § 4(lll), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, 29-399.65, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.65. Same — Appointment of custodian for close corporation.

(a) The court, upon application of any shareholder, may appoint 1 or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of any close corporation when:

(1) Pursuant to § 29-399.64 the business and affairs of the corporation are managed by the shareholders and they are so divided that the business of the corporation is suffering or is threatened with irreparable injury and any remedy with respect to the deadlock provided in the articles of incorporation or bylaws or in any written agreement of the shareholders has failed; or

(2) The petitioning shareholder has the right to the dissolution of the corporation under a provision of the articles of incorporation permitted by § 29-399.68.

(b) A custodian appointed under this section shall have all the powers and title of a receiver appointed under § 29-391, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the court shall otherwise order and except in cases arising under subsection (a)(2) of this section.

(c) In lieu of appointing a custodian for a close corporation under this section, the court may appoint a provisional director whose powers and status shall be as provided in § 29-399.66 if the court determines that it would be in the best interest of the corporation. Such an appointment shall not preclude any subsequent order of the court appointing a custodian for the corporation. (June 8, 1954, ch. 269, § 166, as added Sept. 10, 1992, D.C. Law 9-144, § 4(mmm), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, 29-399.66, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.66. Same — Appointment of a provisional director in certain cases.

(a) Notwithstanding any contrary provision of the articles of incorporation or the bylaws or agreement of the shareholders, the court may appoint a provisional director for a close corporation if the directors are so divided respecting the management of the corporation's business and affairs that the votes required for action by the board of directors cannot be obtained, with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

(b) An application for relief under this section must be filed (i) by at least ½ of the number of directors then in office, (ii) by the holders of at least ⅓ of all stock then entitled to elect directors, or (iii) if there be more than 1 class of stock then entitled to elect 1 or more directors, by the holders of ⅔ of the stock of the class; but the articles of incorporation of a close corporation may provide that a lesser proportion of the directors, the shareholders, or a class of shareholders may apply for relief under this section.

(c) A provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court. A provisional director is not a receiver of the corporation and does not have the title and powers of a custodian or receiver appointed under §§ 29-391 and 29-399.65. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until the provisional director shall be removed by order of the court or by the holders of a majority of all shares then entitled to vote to elect directors or by the holders of ⅔ of the shares of that class of voting shares which filed the application for appointment of a provisional director. A provisional director's compensation shall be determined by agreement between the provisional director and the corporation subject to approval of the court, which may fix the provisional director's compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

(d) Even though the requirements of subsection (b) of this section relating to the number of directors or shareholders who may petition for appointment of a provisional director are not satisfied, the court may nevertheless appoint a provisional director if permitted by § 29-399.65(c). (June 8, 1954, ch. 269, § 167, as added Sept. 10, 1992, D.C. Law 9-144, § 4(nnn), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, 29-399.65, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.67. Same — Operating corporation as partnership.

No written agreement among shareholders of a close corporation, nor any provision of the articles of incorporation or of the bylaws of the corporation, which agreement or provision relates to any phase of the affairs of the corporation, including, but not limited to, the management of its business or declaration and payment of dividends other division of profits or the election of directors or officers or the employment of shareholders by the corporation or the arbitration of disputes, shall be invalid on the ground that it is an attempt by the parties to the agreement or by the shareholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the shareholders or between the shareholders and the corporation in a manner that would be appropriate only among partners. (June 8, 1954, ch. 269, § 168, as added Sept. 10, 1992, D.C. Law 9-144, § 4(ooo), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.68. Same — Shareholders' option to dissolve corporation.

(a) The articles of incorporation of any close corporation may include a provision granting to any shareholder, or to the holders of any specified number or percentage of shares of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever such an option to dissolve is exercised, the shareholders exercising the option shall give written notice to all other shareholders. After the expiration of 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented in writing to dissolution of the corporation as provided by § 29-399.37.

(b) If the articles of incorporation as originally filed do not contain a provision authorized by subsection (a) of this section, the articles may be amended to include such a provision if adopted by the affirmative vote of the holders of all the outstanding stock, whether or not entitled to vote, unless the articles of incorporation specifically authorize such an amendment by a vote which shall be not less than ⅔ of all the outstanding stock whether or not entitled to vote.

(c) Each stock certificate in any corporation whose articles of incorporation authorize dissolution permitted by this section shall conspicuously note on its face the existence of the provision. Unless noted conspicuously on the face of the stock certificate, the provision is invalid. (June 8, 1954, ch. 269, § 169, as added Sept. 10, 1992, D.C. Law 9-144, § 4(ppp), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, 29-399.59, 29-399.65, and 29-399.69.

Legislative history of Law 9-144. — See note to § 29-358.1.

§ 29-399.69. Same — Effect of close corporation provisions on other laws.

The provisions of §§ 29-399.54 through 29-399.69 shall not be deemed to repeal any statute or rule of law which is or would be applicable to any corporation which is organized under the provisions of this chapter but is not a close corporation. (June 8, 1954, ch. 269, § 170, as added Sept. 10, 1992, D.C. Law 9-144, § 4(qqq), 39 DCR 4863.)

Section references. — This section is referred to in §§ 29-399.54, 29-399.58, and 29-399.59.

Legislative history of Law 9-144. — See note to § 29-358.1.

CHAPTER 4. DISSOLUTION.

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§ 29-401. Voluntary dissolution — Application for decree or to court.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(d)(2); 1973 Ed., § 29-701.)

Cross references. — As to dissolution of corporation by sale of all its assets, see § 29-240.

As to involuntary dissolution, see § 29-419 et seq.

Corporation does not cease to exist through the discontinuance of its business, through ceasing to maintain its active organization, or by becoming hopelessly insolvent. Fields v. United States, 27 App. D.C. 433 (1906), appeal dismissed, 205 U.S. 292, 27 S. Ct. 543, 51 L. Ed. 807 (1907).

§ 29-402. Same — Contents of application.

Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto:

(1) A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto;

(2) A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their residences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon; and

(3) A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or cancelled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 769; 1973 Ed., § 29-702.)

Voluntary dissolution not void. — A voluntary liquidation and dissolution of a solvent company, together with the appointment of receivers and reference to the Auditor as provided by law, is not ultra vires, illegal or void. Tryson v. Southern Realty Corp., 274 F. 135 (D.C. Cir. 1921).

§ 29-403. Order to appear; notice.

On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for 3 successive weeks, the first insertion to be not less than 1 month before the day fixed for showing cause as aforesaid. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 770; 1973 Ed., § 29-703.)

§ 29-404. Auditor's report of corporate officers.

Whether answer be made or not, the cause shall be referred to the Auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 771; 1973 Ed., § 29-704.)

Office of Auditor abolished. — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of certifying as to the accuracy of the yearly financial statement of the Armory Board was transferred to the Internal Audit Office. The executive functions of the Board of Commissioners were

transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established, within the newly created Department of General Administration, an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that Office the functions of the Municipal Audit Office. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

§ 29-405. Decree of dissolution; appointment of receivers.

If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing 1 or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 772; 1973 Ed., § 29-705.)

§ 29-406. Receiver — Bond required.

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 773; 1973 Ed., § 29-706.)

§ 29-407. Same — Vested with corporate property.

Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 774; 1973 Ed., § 29-707.)

Cited in Tryson v. Southern Realty Corp., 274 F. 135 (D.C. Cir. 1921).

§ 29-408. Same — Corporate authority; notice of appointment.

The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 775; 1973 Ed., § 29-708.)

§ 29-409. Effect of transactions and judgments confessed after petition filed.

All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corporation after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 776; 1973 Ed., § 29-709.)

§ 29-410. Receiver; settlement of controversies; executory contracts.

The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed cancelled and discharged as against the receiver. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 777; 1973 Ed., § 29-710.)

§ 29-411. Surplus assets — Distribution to creditors.

The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation, giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 778; 1973 Ed., § 29-711.)

§ 29-412. Same — Distribution to stockholders.

No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 779; 1973 Ed., § 29-712.)

§ 29-413. Receiver subject to court's direction; compensation.

The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 780; 1973 Ed., § 29-713.)

§ 29-414. Dissolution before capital stock paid in or investments made.

When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation cannot be accomplished, and no installment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation cannot be accomplished, the corporation shall thereupon be dissolved and cease. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 781; 1973 Ed., § 29-714.)

§ 29-415. Dissolution by expiration of charter; authority of trustees for creditors and stockholders.

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(d)(2); 1973 Ed., § 29-715.)

Cross references. — As to court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, see §§ 11-501 and 11-921.

Section references. — This section is referred to in § 29-240.

§ 29-416. Dissolution — Actions pending not abated.

No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 783; 1973 Ed., § 29-716.)

Cross references. — As to abatement and revivor, see Chapter 1 of Title 12.

Section references. — This section is referred to in § 29-240.

Foreign corporation dissolved by chartering state. — A foreign corporation doing business in the District which had been dissolved by its chartering state could not be sued in the District after dissolution, since local statutes preserve litigation only as to local corporations, and the chartering state did not preserve such litigation. Sedgwick v. Beasley, 173 F.2d 918 (D.C. Cir. 1949).

§ 29-417. Same — Proceedings in corporate name for use of others.

A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 784; 1973 Ed., § 29-717.)

Section references. — This section is referred to in § 29-240.

§ 29-418. Suits after dissolution.

Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any 1 of the assignees, trustees, or receivers having the management of the assets of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 785; 1973 Ed., § 29-718.)

Cross references. — As to abatement and revivor, see Chapter 1 of Title 12.

Section references. — This section is referred to in § 29-240.

Action brought against dissolved corporation proper. — An action may be properly brought against a company in its corporate name even though it has been lawfully dissolved. Lyman v. Knickerbocker Theatre Co., 5 F.2d 538 (D.C. Cir. 1925).

Foreign corporation dissolved in chartering state. — A foreign corporation doing business in the District which has been dissolved by its chartering state cannot be sued in the District after its dissolution, since local statutes preserve litigation only as to local corporations, and the chartering state did not preserve such litigation. Sedgwick v. Beasley, 173 F.2d 918 (D.C. Cir. 1949).

Cited in Bloedorn v. Washington Times Co., 89 F.2d 835 (D.C. Cir. 1937).

§ 29-419. Involuntary dissolution — Suit by United States Attorney.

Whenever the United States Attorney for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said United States Attorney shall file in the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 a petition setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, §§ 168(d)(2), 169(2); 1973 Ed., § 29-719.)

Cross references. — As to court having jurisdiction of civil actions wherein amount in controversy exceeds $50,000, see §§ 11-501 and 11-921.

As to voluntary dissolution, see §§ 29-401 to 29-415.

Section references. — This section is referred to in § 29-1136.

This section requires that the proceeding be initiated by the United States Attorney for the District of Columbia. United States ex rel. Robinson v. Bar Ass'n, 197 F.2d 408 (D.C. Cir. 1952).

§ 29-420. Same — Answer of corporation.

The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 787; 1973 Ed., § 29-720.)

Section references. — This section is referred to in § 29-1136.

§ 29-421. Pleading.

The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within 5 days thereafter. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 788; 1973 Ed., § 29-721.)

Section references. — This section is referred to in § 29-1136.

§ 29-422. Trial; decree of forfeiture; appointment of receiver.

If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 789; 1973 Ed., § 29-722.)

Section references. — This section is referred to in §§ 29-423 and 29-1136.

§ 29-423. Ex parte proceeding after default in pleading.

If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to hear the application ex parte within 5 days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in § 29-422. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 790; 1973 Ed., § 29-723.)

Section references. — This section is referred to in § 29-1136.

§ 29-424. Final decree; power to withhold pending remedy of grievance.

If the court, either upon a hearing ex parte or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 791; 1973 Ed., § 29-724.)

Section references. — This section is referred to in § 29-1136.

§ 29-425. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The United States Attorney may file a bill in said Superior Court of the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said United States Attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this Code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said Superior Court of the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(c)(1)(I), 169(3); 1973 Ed., § 29-725.)

Cross references. — As to quo warranto proceedings questioning rights to corporate rights as franchises, see §§ 16-3521 to 16-3523.

Cited in National Ass'n of CPAs v. United States, 292 F. 668 (D.C. Cir. 1923).

§ 29-426. Involuntary dissolution on application of creditors.

When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the United States Attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 794; June 25, 1948, 62 Stat. 909, ch. 646, § 1; 1973 Ed., § 29-726.)

Section references. — This section is referred to in § 29-1136.

Cited in National Benefit Life Ins. Co. v. Shaw-Walker Co., 111 F.2d 497 (D.C. Cir.), cert. denied, 311 U.S. 673, 61 S. Ct. 35, 85 L. Ed. 432 (1940).

§ 29-427. Injunction against transferring assets.

Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and

officers from collecting or receiving any debt or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 795; 1973 Ed., § 29-727.)

Section references. — This section is referred to in § 29-1136.

Appointment of a receiver is at the court's discretion. — National Benefit Life Ins. Co. v. Shaw-Walker Co., 111 F.2d 497 (D.C. Cir.), cert. denied, 311 U.S. 673, 61 S. Ct. 35, 85 L. Ed. 432 (1940).

§ 29-428. Parties defendant in creditor's suit.

Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 796; 1973 Ed., § 29-728.)

Section references. — This section is referred to in § 29-1136.

§ 29-429. Account and distribution.

In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 797; 1973 Ed., § 29-729.)

Section references. — This section is referred to in § 29-1136.

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§ 29-501. Short title.

This chapter shall be known and may be cited as the "District of Columbia Nonprofit Corporation Act." (Aug. 6, 1962, 76 Stat. 265, Pub. L. 87-569, § 1; 1973 Ed., § 29-1001.)

Cross references. — As to Public Access Corporation, see § 43-1829.

Section references. — This chapter is referred to in § 31-2103.

Cited in Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983); Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661 (D.D.C. 1986).

§ 29-502. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of the District of Columbia, for a purpose or purposes for which a corporation might be organized under this chapter, but shall not include a corporation created by a special act of Congress.

(3) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in

this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation as permitted in this chapter.

(4) "Articles of incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special act of Congress, means such special act and any amendments thereto made by special act of Congress, or pursuant to general law.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(8) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(9) "Mayor" means the Mayor of the District of Columbia or the agent or agents designated by him to perform any function vested in the Mayor by this chapter.

(10) "District" means the District of Columbia.

(11) "The court," except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000. (Aug. 6, 1962, 76 Stat. 266, Pub. L. 87-569, § 2; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(e)(1); 1973 Ed., § 29-1002.)

Cross references. — As to court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, see §§ 11-501 and 11-921.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661 (D.D.C. 1986).

§ 29-503. Applicability.

(a) The provisions of this chapter relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this chapter.

(b) The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in the District of

Columbia for a purpose or purposes for which a corporation might be organized under this chapter.

(c) No corporation eligible to be formed under this chapter shall be incorporated under any other act or statute now in force in the District of Columbia except that those organizations eligible to be formed under the acts or parts of acts referred to in § 49-303, may be formed under those acts or part of acts. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 85-569, § 3; 1973 Ed., § 29-1003.)

Cross references. — As to other provisions dealing with nonprofit organizations, see Chapters 7, 8, 9, 10, and 11 of this title, Chapter 17 of Title 31, and Title 32.

§ 29-504. Purposes for corporate organization.

Corporations may be organized under this chapter for any lawful purpose or purposes including, but not limited to, 1 or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that cooperative organizations or organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 4; 1973 Ed., § 29-1004.)

Cited in Watergate S., Inc., v. Duty, App. D.C., 464 A.2d 141 (1983).

§ 29-505. General powers.

Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) To sue and be sued, complain, and defend, in its corporate name;

(3) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) To lend money to and otherwise assist its employees other than its officers and directors;

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this chapter in any part of the world;

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;

(14) To indemnify any director, or officer, or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;

(15) To cease its corporate activities and surrender its corporate franchise; and

(16) To have and excerise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 5; 1973 Ed., § 29-1005.)

Cross references. — As to management of institutional funds, see § 32-1401 et seq.

§ 29-506. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be,

performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation; or

(3) In a proceeding by the Mayor, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Mayor to enjoin the corporation from the transaction of unauthorized acts. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 6; 1973 Ed., § 29-1006.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section did not apply where there was no ultra vires exercise of power. — Where there was no ultra vires exercise of power, such as this section governs, this section does not limit the categories of parties who may assert that a corporation whose charter has been revoked lacked the ability to receive by deed a parcel of real property. Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

§ 29-507. Corporate name.

The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than 1 or more of the purposes contained in its articles of incorporation;

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation whether for profit or not for profit authorized to transact business or conduct affairs in the District, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or in accordance with the provisions of Chapter 3 of this title;

(3) Shall be transliterated into letters of the English alphabet, if it is not in English; and

(4) Shall not indicate, nor shall any statement be made, that the corporation is organized under an act of Congress. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 7; 1973 Ed., § 29-1007.)

§ 29-508. Reserved name; transferability of right to exclusive use.

(a) The exclusive right to the use of a corporate name may be reserved by any person or corporation, domestic or foreign, by delivering to the Mayor an application to reserve a specified corporate name, executed by the applicant. If the Mayor finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 60 days. Such reservation may be renewed for an additional period of 60 days and for good cause shown such reservation may be further extended for a reasonable period.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by delivering to the Mayor a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 8; 1973 Ed., § 29-1008.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-509. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia:

(1) A registered office, which may be, but need not be, the same as its principal office; and

(2) A registered agent, which agent may be either an individual resident of the District of Columbia whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District of Columbia and having an office identical with such registered office. (Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 9; 1973 Ed., § 29-1009.)

Service of process upon corporation which has lost right to do business. — Where a corporation has lost its right to conduct business as a corporation, even for the

purpose of defending against a lawsuit, and does not have a registered agent as required by this section and § 29-511, service of process under former Super. Ct. Civ. R. 4(d)(3) is appropriate upon the mayor under § 29-511(b). National Paralegal Inst., Inc. v. Bernstein, App. D.C., 498 A.2d 560 (1985).

§ 29-510. Change of registered office or registered agent.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Mayor a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent;

(6) That the address of its registered office and the address of the office of its registered agent as changed will be identical; and

(7) That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, and delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Mayor.

(d) A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a corporation may resign as such agent by delivering written notice thereof, executed in triplicate, to the Mayor, who shall file 1 copy thereof in his office and forthwith mail a copy thereof to the corporation at its registered office and another copy to the corporation at its principal office in the District of Columbia as shown by the records of the Mayor. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Mayor or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or other

charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 10; 1973 Ed., § 29-1010.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-511. Registered agent for service.

(a) The registered agent appointed by a corporation as provided in this chapter shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Mayor shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Mayor of any such process, notice, or demand shall be made by delivering to and leaving with him or with any clerk having charge of his office duplicate copies of such process, notice, or demand and a fee of $10. In the event that any such process, notice, or demand is served on the Mayor, he shall immediately cause 1 of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Mayor shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 11; 1973 Ed., § 29-1011; Mar. 14, 1984, D.C. Law 5-64, § 3(a), 31 DCR 195.)

Cross references. — As to exemption of government agencies from fees levied for Mayor acting as registered agent, see § 29-599.14.

Section references. — This section is referred to in § 29-599.14.

Legislative history of Law 5-64. — Law 5-64, the "Mayoral Agent for Service of Process Fee Increase Act of 1983," was introduced in Council and assigned Bill No. 5-91, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 20, 1983, and January 3, 1984, respectively. Signed by the Mayor on January 11, 1984, it was assigned Act No. 5-97 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Service upon corporation which has lost rights to do business. — Where a corporation has lost its right to conduct business as a corporation, even for the purpose of defending against a lawsuit, and does not have a registered agent as required by § 29-509 and this section, service of process under former Super. Ct. Civ. R. 4(d)(3) is appropriate upon the mayor under subsection (b) of this section. National Paralegal Inst., Inc. v. Bernstein, App. D.C., 498 A.2d 560 (1985).

§ 29-512. Members.

A corporation may have 1 or more classes of members or may have no members. If the corporation has 1 or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 12; 1973 Ed., § 29-1012.)

§ 29-513. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 13; 1973 Ed., § 29-1013.)

§ 29-514. Meetings of members — Annual and special.

(a) Meetings of members may be held at such place within or without the District of Columbia as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, the secretary, the board of directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least one-twentieth of the votes entitled to be cast at such meeting. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 14; 1973 Ed., § 29-1014.)

§ 29-515. Same — Notice.

Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 15; 1973 Ed., § 29-1015.)

§ 29-516. Voting.

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give 1 candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted members. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 16; 1973 Ed., § 29-1016.)

Cited in National Confederation of Am. Ethnic Groups v. Genys, App. D.C., 457 A.2d 395 (1983).

§ 29-517. Quorum.

(a) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members having at least one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of

any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

(b) Unless otherwise provided by the articles of incorporation or the bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 17; 1973 Ed., § 29-1017.)

§ 29-518. Board of directors — Qualifications.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the District of Columbia or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 18; 1973 Ed., § 29-1018.)

Fiduciary duty violated. — A director or trustee of a charitable hospital organized under this chapter is in default of his fiduciary duty to manage the fiscal and investment affairs of the hospital if it has been shown by a preponderance of the evidence: (1) That while assigned to a particular committee of the board having general financial or investment responsibility under the bylaws of the corporation, he has failed to use due diligence in supervising the actions of those officers, employees or outside experts to whom the responsibility for making day-to-day financial or investment decision has been delegated; (2) that he knowingly permitted the hospital to enter into a business transaction with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, without having previously informed persons charged with approving that transaction of his interest or position and of any significant reasons why the transaction might not be in the best interest of the hospital; or (3) that he actively participated in or voted in favor of a decision by the board or any committee or subcommittee thereof to transact business with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, or if he otherwise failed to perform his duties honestly, in good faith, and with a reasonable amount of diligence and care. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003 (D.D.C. 1974).

§ 29-519. Same — Number; election; classification; and removal.

(a) The number of directors of a corporation shall be not less than 3. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the

absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 19; 1973 Ed., § 29-1019.)

§ 29-520. Same — Vacancies.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the board of directors, though less than a quorum of the board, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 20; 1973 Ed., § 29-1020.)

§ 29-521. Same — Quorum.

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter or by the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 21; 1973 Ed., § 29-1021.)

§ 29-522. Same — Designation or appointment of committees; authority.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may

designate and appoint 1 or more committees, each of which shall consist of 2 or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 22; 1973 Ed., § 29-1022.)

§ 29-523. Same — Meetings.

(a) Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, and upon such notice as may be prescribed in the bylaws or, where not inconsistent with the bylaws, by resolution of the board of directors.

(b) Unless otherwise provided in the articles of incorporation or the bylaws, any or all directors may participate in a meeting of the board of directors or a committee of the board by means of conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.

(c) A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 23; 1973 Ed., § 29-1023; Aug. 1, 1981, D.C. Law 4-24, § 2, 28 DCR 2618.)

Legislative history of Law 4-24. — Law 4-24, the "District of Columbia Nonprofit Corporation Act and Business Corporation Act Amendment Act of 1981," was introduced in Council and assigned Bill No. 4-60, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-45 and transmitted to both Houses of Congress for its review.

§ 29-524. Officers — Appointment or election; tenure of office; authority.

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include 1 or more vice-presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not

exceeding 3 years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any 2 or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the bylaws may provide that any 1 or more officers of the corporation or other organizations shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the bylaws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 24; 1973 Ed., § 29-1024.)

§ 29-525. Same — Removal.

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 25; 1973 Ed., § 29-1025.)

Purpose of section is to insure the preservation of an officer's or agent's existing contract rights while permitting removal when in the corporation's best interest. Sullivan v. Heritage Found., App. D.C., 399 A.2d 856 (1979).

Contract rights not created. — This section unambiguously states that appointment or election for a term does not, by itself, create contract rights. Sullivan v. Heritage Found., App. D.C., 399 A.2d 856 (1979).

Cited in Foster v. Ripley, 645 F.2d 1142 (D.C. Cir. 1981).

§ 29-526. Books and records; right of inspection.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the District of Columbia a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 26; 1973 Ed., § 29-1026.)

Cited in Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661 (D.D.C. 1986).

§ 29-527. Shares of stock and dividends prohibited.

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members or others as permitted by this chapter. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 27; 1973 Ed., § 29-1027.)

§ 29-528. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 28; 1973 Ed., § 29-1028.)

§ 29-529. Incorporators.

Three or more natural persons of the age of 18 years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Mayor articles of incorporation for such corporation. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 29; 1973 Ed., § 29-1029; Feb. 24, 1987, D.C. Law 6-192, § 24, 33 DCR 7836.)

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reoganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-530. Articles of incorporation.

(a) The articles of incorporation shall set forth:
(1) The name of the corporation;
(2) The period of duration, which may be perpetual;
(3) The purpose or purposes for which the corporation is organized;
(4) If the corporation is to have no members, a statement to that effect;

(5) If the corporation is to have 1 or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote;

(6) If the directors or any of them are not to be elected or appointed by 1 or more classes of members, a statement of the manner in which such directors shall be elected or appointed; or that the manner of such election or appointment of such directors shall be provided in the bylaws;

(7) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) The number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify; and

(10) The name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 30; 1973 Ed., § 29-1030.)

§ 29-531. Corporation treated as tax-exempt private foundation; provisions deemed contained in governing instrument; amendment of governing instrument.

(a)(1) Notwithstanding any provision to the contrary in the governing instrument or under any law applicable to the District of Columbia (except as provided in subsection (c) of this section), the governing instrument of any corporation organized under the laws of the District of Columbia, or under any act of Congress applicable to the District of Columbia, which is treated during a particular year as a private foundation described in § 509 of the Internal Revenue Code of 1954 shall be deemed during such particular year to contain the following provisions:

(A) The corporation shall not engage in any act of self-dealing which is taxable under § 4941 of the Code;

(B) The corporation shall make distributions at such time and in such manner as not to subject it to tax under § 4942 of the Code;

(C) The corporation shall not retain any excess business holdings which would subject it to tax under § 4943 of the Code;

(D) The corporation shall not make any investments which would subject it to tax under § 4944 of the Code; and

(E) The corporation shall not make any taxable expenditures which would subject it to tax under § 4945 of the Code.

(2) With respect to any such corporation organized prior to January 1, 1970, this subsection shall apply to taxable years beginning on or after January 1, 1972.

(b) The governing instrument of any corporation described in subsection (a) of this section may be amended, in the manner provided by law for amendment of such governing instrument, expressly to include the provisions required by § 508(e) of the Code.

(c) The provisions of subsection (a) of this section shall not apply to any corporation to the extent that its governing instrument is amended in the manner provided by law for amendment of such governing instrument, expressly to exclude the application of subsection (a) of this section.

(d) For purposes of this section, the term "corporation" includes an association (other than an association treated as a trust described in § 21-1801).

(e) For the purposes of this section, the term "Code" means the Internal Revenue Code of 1954. (Dec. 6, 1971, 85 Stat. 496, Pub. L. 92-177, § 2; 1973 Ed., § 29-1030a.)

Cross references. — As to charitable and split-interest trusts, see § 21-1801.

References in text. — Sections 508(e), 509, 4941, 4942, 4943, 4944, and 4945 of the Internal Revenue Code of 1954, referred to in this section, are classified to 26 U.S.C. §§ 508(e), 509, 4941, 4942, 4943, 4944, and 4945, respectively.

§ 29-532. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Mayor.

(b) If the Mayor finds that the articles of incorporation conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original; and

(4) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 31; 1973 Ed., § 29-1031.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-533. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 32; 1973 Ed., § 29-1032.)

§ 29-534. Organization meetings; purpose; notice.

(a) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States at the call of a majority of the directors so named for the purpose of adopting bylaws (unless the power to adopt bylaws have been reserved by the articles of incorporation to the members, in which event the bylaws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least 5 days notice thereof by mail to each director so named, which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least 5 days notice, for such purposes as shall be stated in the notice of meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 33; 1973 Ed., § 29-1033.)

§ 29-535. Articles of incorporation — Right to amend.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 34; 1973 Ed., § 29-1034.)

§ 29-536. Same — Procedure to amend.

Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(3) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(4) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(5) Any number of amendments may be submitted and voted upon at any 1 meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 35; 1973 Ed., § 29-1035.)

§ 29-537. Articles of amendment — Contents; vote required for approval.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(1) The name of the corporation;

(2) The amendment so adopted;

(3) Where there are members having voting rights:

(A) A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(B) A statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 36; 1973 Ed., § 29-1036.)

§ 29-538. Same — Filing.

(a) Duplicate originals of the articles of amendment shall be delivered to the Mayor.

(b) If the Mayor finds that the articles of amendment conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of amendment to which he shall affix the other duplicate original; and

(4) Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 37; 1973 Ed., § 29-1037.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-539. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 38; 1973 Ed., § 29-1038.)

§ 29-540. Procedure for merger.

Any 2 or more domestic corporations subject to the provisions of this chapter may merge into 1 of such corporations in the following manner: the board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) The terms and conditions of the proposed merger;

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 39; 1973 Ed., § 29-1039.)

§ 29-541. Procedure for consolidation.

Any 2 or more domestic corporations subject to the provisions of this chapter may consolidate into a new corporation in the following manner: the board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidation;

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 40; 1973 Ed., § 29-1040.)

§ 29-542. Merger or consolidation — Procedure for approval.

A plan of merger or consolidation shall be approved in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members.

(3) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(4) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(5) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 41; 1973 Ed., § 29-1041.)

§ 29-543. Same — Contents of articles.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-

president, and the corporate seal of each such corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(1) The plan of merger or the plan of consolidation;

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation:

(A) A statement setting forth the date of the meeting of members at which the plan was approved, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(B) A statement that such amendment was approved by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was approved and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Mayor.

(c) If the Mayor finds that such articles conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original; and

(4) Deliver the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto, to the surviving or new corporation, as the case may be, or its representative. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 42; 1973 Ed., § 29-1042.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-544. Same — Effective date.

Upon the issuance of the certificate of merger, or the certificate of consolidation by the Mayor, the merger or consolidation shall be effected. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 43; 1973 Ed., § 29-1043.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-545. Same — Effect; surviving or new corporation; rights, privileges, powers, immunities, duties and liabilities.

When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property — real, personal, and mixed — and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to, or due to, each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or other property, or any interest therein, vested in any of such corporations shall not revert unless required by the terms of the gift, bequest, or devise, or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the

case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 44; 1973 Ed., § 29-1044.)

§ 29-546. Same — Domestic and foreign corporations.

(a) One or more foreign corporations and 1 or more domestic corporations may be merged or consolidated if permitted by the laws of the state or country under which each such foreign corporation is organized.

(b) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state or country under which it is organized.

(c) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state or country other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to carry on its affairs in the District of Columbia, and in every case it shall deliver to the Mayor, who shall file:

(1) An agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation;

(2) An irrevocable appointment of the Mayor of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) A post office address to which the Mayor may mail a copy of any service of process, notice, or demand against the corporation that may be served on him.

(d) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (Aug. 6, 1962, 76 Stat. 281, Pub. L. 87-569, § 45; 1973 Ed., § 29-1045.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-547. Sale, lease, exchange, or mortgage of assets.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose, or 1 of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members.

(3) At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(4) After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(5) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 282, Pub. L. 87-569, § 46; 1973 Ed., § 29-1046.)

§ 29-548. Voluntary dissolution — Notice; vote required for approval.

A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or 1 of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting,

within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 47; 1973 Ed., § 29-1047.)

§ 29-549. Same — Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to 1 or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution adopted as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 48; 1973 Ed., § 29-1048.)

Dissolution of non-profit corporation formed to perpetuate two private schools. — There was no beneficial or trust interest in alumni, students or parents of students of parochial schools nor did paragraph (3) of this section apply where the charter of the non-

profit organizations operating the schools provided that upon dissolution assets should revert to the religious order owning the real estate and which had originated the schools. Save Immaculata/Dunblane, Inc. v. Immaculata Preparatory Sch., Inc., App. D.C., 514 A.2d 1152 (1986).

§ 29-550. Same — Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 49; 1973 Ed., § 29-1049.)

§ 29-551. Same — Revocation of proceedings; notice; vote required for approval.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Mayor, as hereinafter provided, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or 1 of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Mayor, notice of such revocation shall be given to him in writing. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 50; 1973 Ed., § 29-1050.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-552. Articles of dissolution — Contents.

If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president, and the corporate seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

(1) The name of the corporation;

(2) Where there are members having voting rights:

(A) A statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(B) A statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(4) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter; and

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment,

order, or decree which may be entered against it in any pending suit. (Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 51; 1973 Ed., § 29-1051.)

§ 29-553. Same — Procedure for filing.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Mayor.

(b) If the Mayor finds that such articles of dissolution conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original; and

(4) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter. (Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 52; 1973 Ed., § 29-1052.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reoganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-554. Involuntary dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Mayor in the name of the District of Columbia when it is made to appear to the court that:

(1) The franchise of the corporation was procured through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter;

(3) The corporation has failed for 90 days to appoint and maintain a registered agent as provided in this chapter; or

(4) The corporation has failed for 90 days after change of its registered office or registered agent to deliver to the Mayor a statement of such change.

(b) At least 30 days before any action for the involuntary dissolution of a corporation shall be filed by the Mayor, he shall notify the corporation by certified or registered mail addressed to such corporation at its registered office

a notice of his intention to file such suit and the reason therefor. If, before action is filed, the corporation as the case may be shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this chapter, or deliver to the Mayor the required statement of change of registered agent, the Mayor shall not file an action against such corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of subsection (a) of this section, the corporation shall as the case may be appoint or maintain a registered agent as provided in this chapter, or shall deliver to the Mayor the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 53; 1973 Ed., § 29-1053.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-555. Venue and process.

In every action for the involuntary dissolution of a corporation hereinbefore provided, summons shall issue and be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Mayor shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Mayor shall cause a copy of such notice to be mailed by registered or certified mail to the corporation at its registered office within 10 days after the first publication thereof. The certificate of the Mayor of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for 2 successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first publication of such notice. The cost of publication of such notice shall be paid by the Mayor, unless the decree is against the corporation and such cost is collected from it. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 54; 1973 Ed., § 29-1054.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-556. Liquidation proceedings — Jurisdiction of court.

(a) The court shall have full power to liquidate the assets and affairs of a corporation:

(1) In any action by a member or director when it is made to appear:

(A) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights;

(B) That the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(C) That the corporate assets are being misapplied or wasted; or

(D) That the corporation is unable to carry out its purposes;

(2) In an action by a creditor:

(A) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(B) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(3) Upon application by a corporation to have its dissolution continued under the supervision of the court; and

(4) When an action has been commenced by the Mayor to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution.

(b) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally. (Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 55; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(e) (2); 1973 Ed., § 29-1055.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-557. Same — Procedure; hearing; authority of receivers; distribution of assets.

(a) In proceedings to liquidate the assets and affairs of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to 1 or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others; and

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

(d) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 56; 1973 Ed., § 29-1056.)

§ 29-558. Same — Qualification of receivers.

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the District of Columbia, and shall in all cases give such bond as the court may direct with such sureties as the court may require. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 57; 1973 Ed., § 29-1057.)

§ 29-559. Same — Filing of claims.

In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 58; 1973 Ed., § 29-1058.)

§ 29-560. Same — Discontinuance.

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 59; 1973 Ed., § 29-1059.)

§ 29-561. Same — Decree of dissolution.

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and

assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 60; 1973 Ed., § 29-1060.)

§ 29-562. Same — Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be delivered to the Mayor, who shall file the same. No fee shall be charged by the Mayor for the filing thereof. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 61; 1973 Ed., § 29-1061.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-563. Dissolution — Distribution of assets; deposits and registry of court.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in the registry of the court and shall be paid over to such person or to his legal representative upon proof satisfactory to the court of his right thereto. If any portion thereof remain in the registry after 10 years from the date of deposit, it shall escheat to the District of Columbia and shall be paid into the Treasury of the United States for the credit of the said District. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 62; 1973 Ed., § 29-1062.)

§ 29-564. Same — Survival of remedy.

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right of claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the

expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 2 years so as to extend its period of duration. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 63; 1973 Ed., § 29-1063.)

§ 29-565. Foreign corporations — Admission to conduct affairs in District.

(a) A foreign corporation to which this chapter is applicable shall procure a certificate of authority from the Mayor before it conducts affairs in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in the District any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) Without excluding other activities which may not constitute conducting affairs in the District of Columbia, a foreign corporation shall not be considered to be conducting affairs in the District for the purposes of the chapter, by reason of conducting an isolated transaction completed in 30 days and not in the course of a number of repeated transactions of like nature or by reason of any 1 or more of the following activities in the District:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Creating evidences of debt, mortgages, or liens on real or personal property; or

(5) Collecting its debts, taking security for the same, or enforcing any rights in property securing the same. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 64; 1973 Ed., § 29-1064.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-566. Same — Powers authorized.

(a) No foreign corporation to which this chapter is applicable shall conduct in the District any affairs which may not be conducted by a corporation organized under this chapter.

(b) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 65; 1973 Ed., § 29-1065.)

§ 29-567. Same — Corporate name.

No certificate of authority shall be issued to a foreign corporation:

(1) Which has a name the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia or that of any corporation created pursuant to any special act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, or a name, the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or in accordance with the provisions of Chapter 3 of this title; and

(2) Unless the corporate name of such corporation is in English, or is transliterated into letters of the English alphabet if it is not in English. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 66; 1973 Ed., § 29-1066.)

§ 29-568. Same — Change of corporate name.

Whenever a foreign corporation which is authorized to conduct affairs in the District of Columbia shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in the District until it has changed its name to a name which is available to it under the laws of the District. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 67; 1973 Ed., § 29-1067.)

§ 29-569. Same — Application for certificate of authority.

(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs in the District of Columbia, shall make application therefor to the Mayor, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The date of incorporation and the period of duration of the corporation;

(3) The address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(4) The address, including street and number, if any, of the proposed registered office of the corporation in the District, and the name of its proposed registered agent in the District at such address;

(5) A brief statement of the purposes it proposes to pursue in conducting its affairs in the District;

(6) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation; and

(7) Such additional information as may be necessary or appropriate in order to enable the Mayor to determine whether such corporation is entitled to a certificate to conduct affairs in the District.

(b) Such application shall be executed in duplicate by the corporation by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 68; 1973 Ed., § 29-1068.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-570. Same — Filing of application for certificate of authority.

(a) There shall be delivered to the Mayor:

(1) Duplicate originals of the application of the corporation for a certificate of authority; and

(2) A copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated.

(b) If the Mayor finds that such application conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File in his office 1 of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) Issue a certificate of authority to conduct affairs in the District to which he shall affix the other duplicate original application; and

(4) Deliver the certificate of authority, together with the duplicate original of the application affixed thereto, to the corporation or its representative. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 69; 1973 Ed., § 29-1069.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-571. Same — Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Mayor, the corporation shall have the right to conduct affairs in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such authority as provided in this chapter. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 70; 1973 Ed., § 29-1070.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-572. Same — Registered office and registered agent.

Each foreign corporation authorized to conduct affairs in the District shall have and continuously maintain in the District:

(1) A registered office which may be, but need not be, the same as its principal office in the District; and

(2) A registered agent, which agent may be either an individual resident in the District whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, having a business office identical with such registered office. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 71; 1973 Ed., § 29-1071.)

§ 29-573. Same — Change of registered office or registered agent.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Mayor a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent;

(6) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by resolution duly adopted by its board of directors, or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by its president or vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Mayor. If the Mayor finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Mayor.

(d) A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a foreign corporation may resign as such agent by delivering a written notice thereof, executed in duplicate, to the Mayor who shall file 1 copy thereof in his office and forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated as the same appears in the records of the Mayor. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Mayor or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 72; 1973 Ed., § 29-1072.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-574. Same — Service of process.

(a) The registered agent so appointed by a foreign corporation authorized to conduct affairs in the District shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation, may be served. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to conduct affairs in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Mayor shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Mayor of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand and a fee of $10. In the event any such process, notice, or demand is served on the Mayor, he shall immediately cause 1 of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated, as the same appears in the records of the Mayor.

(c) If any foreign corporation shall conduct affairs in the District without a certificate of authority, it shall by conducting such affairs be deemed to have thereby appointed the Mayor its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivery to and leaving with the Mayor, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand and a fee of $10, together with an affidavit giving the latest known post office address of such corporation, and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered or certified mail, addressed to such corporation at the address given in such affidavit.

(d) The Mayor shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a

corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 293, Pub. L. 87-569, § 73; 1973 Ed., § 29-1073; Mar. 14, 1984, D.C. Law 5-64, § 3(b), 31 DCR 195.)

Cross references. — As to exemption of government agencies from fees levied for Mayor acting as registered agent, see § 29-599.14.

Section references. — This section is referred to in § 29-599.14.

Legislative history of Law 5-64. — See note to § 29-511.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-575. Same — Amendment to articles of incorporation; filing.

Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in the District are amended, such foreign corporation shall, within 90 days after such amendment becomes effective, file with the Mayor a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in the District, nor authorize such corporation to conduct affairs in the District under any other name than the name set forth in its certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 74; 1973 Ed., § 29-1074.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-576. Same — Merger.

Whenever a foreign corporation authorized to conduct affairs in the District shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within 90 days after such merger becomes effective, deliver to the Mayor a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which

such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to pursue in the District. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 75; 1973 Ed., § 29-1075.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-577. Same — Amended certificate of authority.

(a) A foreign corporation authorized to conduct affairs in the District shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Mayor.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the delivering of duplicate originals thereof to the Mayor, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 76; 1973 Ed., § 29-1076.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-578. Same — Withdrawal; procurement of certificate of withdrawal required; contents of application.

(a) A foreign corporation authorized to conduct affairs in the District may withdraw from the District upon procuring from the Mayor a certificate of

withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Mayor an application for withdrawal.

(b) The application for withdrawal shall state:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not conducting affairs in the District;

(3) That the corporation surrenders its authority to conduct affairs in the District;

(4) That the corporation revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the District during the time the corporation was authorized to conduct affairs in the District may thereafter be made on such corporation by service thereof on the Mayor; and

(5) A post office address to which the Mayor may mail a copy of any process against the corporation that may be served on him.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 77; 1973 Ed., § 29-1077.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-579. Same — Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Mayor. If the Mayor finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original; and

(4) Deliver the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, to the corporation or its representative.

(b) Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 78; 1973 Ed., § 29-1078.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-580. Same — Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to conduct affairs in the District may be revoked by the Mayor when he finds that:

(1) The certificate of authority of the corporation was procured through fraud practiced upon the District;

(2) The corporation has continued to exceed or has abused the authority conferred upon it by this chapter;

(3) The corporation has failed for a period of 90 days to pay any fees, charges, or penalties prescribed by this chapter;

(4) The corporation has failed for a period of 90 days to appoint and maintain a registered agent in the District;

(5) The corporation has failed for 90 days after change of its registered office or registered agent to file with the Mayor a statement of such changes;

(6) The corporation for a period of 2 years has not conducted any affairs in the District;

(7) The corporation has failed to file with the Mayor a duly certified copy of each amendment to its articles of incorporation within 90 days after such amendment becomes effective; or

(8) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Mayor unless:

(1) He shall have given the corporation not less than 30 days notice thereof by certified or registered mail addressed to such corporation at its principal office in the state or country under the laws of which such corporation is organized, as the same appears in the records of the Mayor or at its registered office in the District; and

(2) The corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or shall fail to appoint a registered agent in the District, or shall fail to file the required statement of

change of registered office or registered agent, or shall fail to file a statement showing that it has conducted affairs in the District within a period of 2 years, or shall fail to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 79; 1973 Ed., § 29-1079.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-581. Same — Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Mayor shall:

(1) Issue a certificate of revocation in duplicate;

(2) File 1 of such certificates in his office; and

(3) Mail the other such certificate to such corporation at its registered office in the District or to its principal place of business as the same appears in the records of the Mayor.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 80; 1973 Ed., § 29-1080.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-582. Same — Application on effective date of chapter.

Foreign corporations conducting affairs in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within 6 months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this

section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this act for conducting affairs without a certificate of authority. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 81; 1973 Ed., § 29-1081.)

Effective date. — Section 110 of the Act of Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, provided that this chapter would take effect 180 days after Aug. 6, 1962.

§ 29-583. Same — Conducting affairs without certificate of authority; validity of contracts or corporate acts not impaired; liabilities.

(a) No foreign corporation which is conducting affairs in the District without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in the District, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of the District.

(c) A foreign corporation which conducts affairs in the District without a certificate of authority shall be liable to the District for the years or parts thereof during which it conducted affairs in the District without a certificate of authority, in an amount equal to all fees, penalties, and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in the District as required by this chapter and thereafter filed all reports required by this chapter; and, in addition thereto, it shall be liable for a penalty to be assessed by the Mayor of not in excess of $200. The Mayor shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 82; 1973 Ed., § 29-1082; Oct. 5, 1985, D.C. Law 6-42, § 431(a), 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed

by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983).

§ 29-584. Five-year report of domestic and foreign corporations — Contents.

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in the District, shall prepare and submit every 5 years, if there has been no change in material facts, a report setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in the District; and

(4) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) The five-year report shall be made on forms prescribed and furnished by the Mayor, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 83; 1973 Ed., § 29-1083; Sept. 8, 1995, D.C. Law 11-42, § 2(a), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 substituted "Five-year" for "Annual" in the title to the section; in the introductory language of (a), substituted "prepare and submit every 5 years, if there has been no change in material facts, a report" for "prepare an annual report"; and, in the first sentence of (b), substituted "The 5-year report" for "Such annual report."

Legislative history of Law 11-42. — Law 11-42, the "Nonprofit Corporation Five-Year Report Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-52, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-77 and transmitted to both Houses

of Congress for its review. D.C. Law 11-42 became effective on September 8, 1995.

Construction of Law 11-42. — Section 2(i) of D.C. Law 11-42 provided that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-585. Same — Procedure for filing.

The report of a domestic or foreign corporation shall be delivered to the Mayor on or before the 15th day of April in the 5th year in which its certificate of incorporation or certificate of authority, as the case may be, was issued by the Mayor. Proof to the satisfaction of the Mayor that prior to the 15th day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Mayor finds that such report conforms to law, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Mayor in sufficient time to be filed prior to the 1st day of July of the year in which it is due. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 84; 1973 Ed., § 29-1084; Sept. 8, 1995, D.C. Law 11-42, § 2(b), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 rewrote the first sentence.

Emergency act amendments. — For temporary amendment of section, see § 3(a) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Legislative history of Law 11-42. — See note to § 29-584.

Construction of Law 11-42. — See note to § 29-584.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-586. Same — Effect of failure to pay or file.

If any corporation incorporated under this chapter, or any corporation which has elected to accept this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall fail or refuse to pay any report fee or fees payable under this chapter, or fail to file a report as required by this chapter, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon the corporation shall be inoperative, and in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred pursuant to it shall be inoperative. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 85; 1973 Ed., § 29-1085; Sept. 8, 1995, D.C. Law 11-42, § 2(c), 42 DCR 3285; Apr. 18, 1996, D.C. Law 11-110, § 30, 42 DCR 530.)

Effect of amendments. — D.C. Law 11-42 rewrote this section.

D.C. Law 11-110 substituted "file a report" for "file an report."

Legislative history of Law 11-42. — See note to § 29-584.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Construction of Law 11-42. — See note to § 29-584.

Cited in National Paralegal Inst., Inc. v. Bernstein, App. D.C., 498 A.2d 560 (1985).

§ 29-587. Proclamation of revocation; effect of publication.

(a) On the second Monday in September of each year, the Mayor shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay the 5-year report fee or fees or failed or refused to file the 5-year report as required by this chapter for 2 consecutive years next preceding June 30th in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Mayor shall be filed in his office and shall be published once during the month of September in each of 2 general circulation newspapers, published in the District, once every 2 weeks or more frequently.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, as in this chapter provided with respect to dissolved corporations.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of 3 years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to pay, satisfy, and discharge their liabilities and obligations and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, as in this chapter provided with respect to dissolved corporations, but not for the purpose of continuing to conduct the affairs for which such corporation shall have been organized; provided, however, that with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within 3 years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued a body corporate beyond said 3-year period and until any judgments, orders, or decrees therein shall be fully executed. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 86; 1973 Ed., § 29-1086; Mar. 16, 1982, D.C. Law 4-81, § 4, 29 DCR 156; Sept. 8, 1995, D.C. Law 11-42, § 2(d), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 substituted "the 5-year report" for "any annual report" twice in (a).

Legislative history of Law 4-81. — Law 4-81, the "Newspaper Publication Act of 1981," was introduced in Council and assigned Bill No. 4-323, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981, and November 24, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-42. — See note to § 29-584.

Application of Law 4-81. — Section 7 of D.C. Law 4-81 provided that it shall apply to any requirement that the District of Columbia publish notices on or after January 1, 1982.

Construction of Law 11-42. — See note to § 29-584.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Corporation whose charter has been revoked under this section ceases to be legal entity, and title to real property cannot pass to it; a subsequent reinstatement of the charter cannot validate an attempted transfer of real property which took place during the period of revocation. Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc., 114 WLR 873 (Super. Ct. 1986).

Service of process upon corporation which has lost right to do business. — Where a corporation has lost its right to conduct business as a corporation, even for the purpose of defending against a lawsuit, and does not have a registered agent as required by §§ 29-509 and 29-511, service of process under former Super. Ct. Civ. R. 4(d)(3) is appropriate upon the Mayor under § 29-511(b). National Paralegal Inst., Inc. v. Bernstein, App. D.C., 498 A.2d 560 (1985).

Cited in Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

§ 29-588. Penalty for conducting affairs after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 87; 1973 Ed., § 29-1087; Oct. 5, 1985, D.C. Law 6-42, § 431(b), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-583.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-589. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Mayor that any corporation named in the proclamation issued in accordance with § 29-587 has not failed or refused to pay the 5-year report fee or any report filing fees, or has been inadvertently included in the list of corporations as failing or refusing to pay the 5-year report fee or any report filing fees, the Mayor is authorized to correct the mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if the proclamation or revocation, as to the corporation, was not issued. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 88; 1973 Ed., § 29-1088; Sept. 8, 1995, D.C. Law 11-42, § 2(e), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 rewrote this section.

Legislative history of Law 11-42. — See note to § 29-584.

Construction of Law 11-42. — See note to § 29-584.

Suspension of 5-year reporting, filing or payment of fees requirements until De-

cember 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

§ 29-590. Proclaimed corporation — Reservation of name.

The Mayor shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31st of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 89; 1973 Ed., § 29-1089.)

Section references. — This section is referred to in § 41-402.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-591. Same — Reinstatement; corporate name.

(a) A domestic corporation, the articles of incorporation of which have been revoked, may at any time after the date of the issuance of the proclamation of revocation deliver to the Mayor a petition for reinstatement, in duplicate, accompanied by the delinquent report or reports, or payment of delinquent report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter. The Mayor, if he finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, shall file them in his office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Mayor after the period for reservation of the name has expired and if he finds that the name is not available for corporate use pursuant to the

provisions of this chapter, then, in addition to complying with the provisions of the preceding subsection the proclaimed corporation shall set forth in its petition for reinstatement its name at the time its articles of incorporation were proclaimed void and the new name by which the corporation will thereafter be known, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) A foreign corporation whose certificate of authority has been revoked shall, upon reentering the District, comply with all of the requirements of law applicable to an original application for a certificate of authority, including the payment of the filing fee for filing an application for a certificate of authority, but it need not file again a copy of its articles of incorporation or any amendment thereof that is then on file with the Mayor. After the revocation of the certificate of authority of a foreign corporation, the Mayor shall retain the articles of incorporation and amendments theretofore filed and the original application for a certificate of authority for a period of 10 years. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 90; 1973 Ed., § 29-1090; Sept. 8, 1995, D.C. Law 11-42, § 2(f), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 deleted "annual" following "delinquent" twice in the first sentence of (a).

Legislative history of Law 11-42. — See note to § 29-584.

Construction of Law 11-42. — See note to § 29-584.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Construed similarly to § 29-399.28. — Although it is not identical, the language in § 29-399.28 governing the reinstatement of charters of for-profit corporations is not materially different from this section governing the reinstatement of charters of nonprofit corporations; thus, the two sections should be construed similarly. Community Credit Union Servs., Inc. v. Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

Retroactive reinstatement for maintenance of action incurred while charter revoked. — The reinstatement of the corporation's charter was held retroactive to restore its existence for the maintenance of an action against it relating to legal responsibilities incurred by the corporation while its charter was revoked. National Paralegal Inst., Inc. v. Bernstein, App. D.C., 498 A.2d 560 (1985).

Reinstatement does not validate property transfer attempted during revocation. — A corporation whose charter has been revoked under § 29-587 ceases to be a legal entity, and title to real property cannot pass to it; a subsequent reinstatement of the charter cannot validate an attempted transfer of real property which took place during the period of revocation. Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc., 114 WLR 873 (Super. Ct. 1986).

§ 29-592. Penalties for failure to file 5-year report.

Each corporation, domestic or foreign, that fails or refuses to file its 5-year report within the time prescribed by this chapter shall be subject to a penalty of $75 to be assessed by the Mayor. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 91; 1973 Ed., § 29-1091; Sept. 8, 1995, D.C. Law 11-42, § 2(g), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 substituted "5-year report" for "annual report" in the heading of the section; and substituted "5-year report" for "annual report" and "$75" for "$5."

Legislative history of Law 11-42. — See note to § 29-584.

Construction of Law 11-42. — See note to § 29-584.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-593. Fees for filing documents and issuing certificates.

(a) The Mayor shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, $30;

(2) Filing articles of amendment and issuing a certificate of amendment, $25;

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $25;

(4) Filing a statement of change of address or registered office or change of registered agent, or both, $20;

(5) Filing articles of dissolution, $20;

(6) Filing an application for reservation of a corporate name or for a renewal of reservation, $25;

(7) Filing notice of transfer of a reserved corporate name, $25;

(8) Filing statement of election to accept this chapter and issuing certificate of acceptance, $30;

(9) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in the District and issuing a certificate of authority, $30;

(10) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in the District and issuing an amended certificate of authority, $25;

(11) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in the District, $25;

(12) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in the District, $25;

(13) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $20;

(14) Filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, $30;

(15) Filing any other statement or report, excluding a 5-year report, of a domestic or foreign corporation, $20;

(16) Indexing each document filed, except a 5-year report, $20;

(17) Furnishing a certified copy of any document, instrument, or paper relating to a corporation, $25;

(18) Furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, $20;

(19) Filing a 5-year report of a domestic or foreign corporation, $100.

(b) The Council of the District of Columbia is authorized to make regulations providing for reasonable fees for other services not listed in this section. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 92; 1973 Ed., § 29-1092; Sept. 26, 1984, D.C. Law 5-113, § 101, 31 DCR 3974; Sept. 8, 1995, D.C. Law 11-42, § 2(h), 42 DCR 3285.)

Effect of amendments. — D.C. Law 11-42 substituted "$30" for "$10" in (a)(1), (8), (9) and (14); substituted "$25" for "$5" in (a)(2), (3), (6), (7), (10), (11), (12) and (17); substituted "$20" for "$1" in (a)(4), (5), (13), (15) and (18); substituted "5-year" for "annual" in (a)(15), (16) and (19); substituted "$20" for "$2" in (a)(16); and substituted "$100" for "$25" in (a)(19).

Legislative history of Law 5-113. — Law 5-113, the "District of Columbia Revenue Act of 1984," was introduced in Council and assigned Bill No. 5-370, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-164 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-42. — See note to § 29-584.

Construction of Law 11-42. — See note to § 29-584.

Mayor authorized to issue rules. — See second paragraph of note to § 47-2601.

Suspension of 5-year reporting, filing or payment of fees requirements until December 31, 1996. — For temporary suspension of 5-year reporting, filing or payment of fees requirements in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 until after December 31, 1996, until which time the 1-year or annual requirements remain in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(234) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-594. Duties and functions of Mayor.

(a) The Mayor shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

(b) The Mayor shall be charged with the administration and enforcement of this chapter. Said Mayor is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress.

(c) The Mayor may transfer any or all of the functions vested in him by this chapter to any agent designated by him pursuant to law. It shall be the duty of any officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Mayor pursuant to this chapter.

(d) Every certificate and other document or paper executed by the Mayor, in pursuance of any authority conferred upon him by this chapter, and sealed with the seal prescribed by subsection (c) of § 29-399.21, and all copies of such papers, as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by him and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Council of the District of Columbia may make and modify, and the Mayor may enforce, any regulations the Council deems necessary to carry out the provisions of this chapter. The Council may prescribe penalties, including civil fines, penalties, and fees, for violation of the regulations not exceeding a fine of $300 or imprisonment for 90 days, or both, and the Mayor may prescribe the forms and procedures for use in the conduct of the business of any office or agency established by him as he may deem appropriate. (Aug. 6, 1962, 76 Stat. 301, Pub. L. 87-569, § 93; 1973 Ed., § 29-1093; Mar. 3, 1979, D.C. Law 2-139, § 3205(hh), 25 DCR 5740; Oct. 5, 1985, D.C. Law 6-42, § 431(c), 32 DCR 4450.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-42. — See note to § 29-583.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(235) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-595. Appeal to court from Mayor.

(a) If the Mayor shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Mayor before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Mayor; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Mayor or direct him to take such action as the court may deem proper.

(b) If the Mayor shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Mayor; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Mayor or direct him to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the court under this section in review of any ruling or decision of the Mayor may be taken as in other civil actions. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 94; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(e)(3); 1973 Ed., § 29-1094.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-596. Certificates and certified copies to be received in evidence.

All certificates issued by the Mayor in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Mayor under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 95; 1973 Ed., § 29-1095.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-597. Forms to be furnished by Mayor.

All reports required by this chapter to be filed in the Office of the Mayor shall be made on forms which shall be prescribed and furnished by the Mayor. Forms for all other documents to be filed in the Office of the Mayor shall be furnished by the Mayor on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 96; 1973 Ed., § 29-1096.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-598. Voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of

a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 97; 1973 Ed., § 29-1097.)

§ 29-599. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 98; 1973 Ed., § 29-1098.)

§ 29-599.1. Action by key members or directors without meeting; written consent required.

(a) Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

(b) Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Mayor under this chapter. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 99; 1973 Ed., § 29-1099.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-599.2. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 100; 1973 Ed., § 29-1099a.)

Liability of corporation. — Individuals on a planning board for an unincorporated organization cannot be held liable for a contract signed by a person who was neither an agent nor a promoter when the board had no involvement in negotiating or signing a contract and did not purport to be acting for or as a corporation. Shoreham Hotel Ltd. Partnership v. Wilder, 866 F. Supp. 1 (D.D.C. 1994).

§ 29-599.3. Acceptance of chapter — Procedure; vote required for approval; adoption by board of directors.

Any corporation which is organized and existing under the laws of the District of Columbia or under any special act of Congress on the date this chapter takes effect, and which is organized not for profit, and is without authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this chapter may elect to avail itself of the provisions of this chapter in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this chapter and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this chapter shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposal to elect to accept this chapter shall be adopted upon receiving at least two-thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, the election to accept this chapter may be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 101; 1973 Ed., § 29-1099b.)

§ 29-599.4. Same — Statement of election; contents.

(a) The statement of election to accept this chapter shall be executed in duplicate by the corporation by its president or vice-president, and the corporate seal shall be thereto affixed, attested by its secretary, or an assistant secretary, and shall set forth:

(1) The name of the corporation;

(2) A statement by the corporation that it has elected to accept this chapter;

(3) Where there are members having voting rights:

(A) A statement setting forth the date of the meeting of the members at which the election to accept this chapter was adopted, that a quorum was present at such meeting, and that such acceptance received the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(B) A statement that such election to accept this chapter was adopted by a consent, in writing, signed by all members entitled to vote with respect thereto;

(4) Where there are no members or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this chapter was adopted, and the statement of the fact that such acceptance received the vote of a majority of the directors in office;

(5) The purpose or purposes (which may be different from its existing purposes) which it will thereafter pursue, and shall not include any purpose prohibited to a corporation organized under this chapter;

(6) If the corporation has no members, a statement to that effect;

(7) If the corporation has members, there shall be set forth:

(A) The number of classes of members;

(B) If there is more than 1 class of members, a statement of the qualifications and rights and limitations of each class of members;

(C) If members, or any class or classes of members, are not entitled to vote, a statement to that effect; and

(D) If members, or any class or classes of members are entitled to vote, a statement setting forth the voting rights and of any limitation or limitations thereof of members or of any class or classes thereof;

(8) Any other provision, not inconsistent with law, or this chapter, for the regulation of the internal affairs of the corporation;

(9) The address, including street and number, if any, of its registered office in the District of Columbia and the name of its registered agent at such address; and

(10) The names and respective addresses, including street and number, if any, of its officers and directors.

(b) It shall not be necessary to set forth in the statement of election to accept this chapter any of the corporate purposes enumerated in this chapter. Whenever a provision in the statement of election to accept this chapter is inconsistent with a bylaw, the provision of the statement of election to accept this chapter shall be controlling. (Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 102; 1973 Ed., § 29-1099c.)

§ 29-599.5. Same — Procedure for filing of statement of election.

(a) Duplicate originals of the statement of election to accept this chapter shall be delivered to the Mayor.

(b) If the Mayor finds that the statement of election to accept this chapter conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his office;

(3) Issue a certificate of acceptance, to which he shall affix the other duplicate original; and

(4) Deliver such certificate of acceptance with the other duplicate original affixed thereto to the corporation or its representative. (Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 103; 1973 Ed., § 29-1099d.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-599.6. Same — Effect of certificate of acceptance.

(a) Upon the issuance of a certificate of acceptance as hereinbefore provided, the election of the corporation to accept this chapter shall become effective and the existence of the corporation shall be continued under this chapter and such certificate shall be conclusive evidence that all conditions precedent required to be performed under this chapter have been complied with and that the corporation has elected to accept the provisions of this chapter and the corporation shall be entitled to and be possessed of all of the privileges and powers and franchises and be subject to all of the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; but no contract, debt, claim, duty, liability, or obligation of any corporation to which a certificate of acceptance has been issued shall be affected or impaired in any way nor shall the rights of creditors or any liens upon the property of such corporation be affected or impaired by such election to accept this chapter.

(b) Neither the issuance of a certificate of acceptance to a corporation created under the provisions of a special act of Congress, nor the adoption of any amendment pursuant to this chapter, shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of the special act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege granted any such corporation by such special act except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporation organized under this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 104; 1973 Ed., § 29-1099e.)

§ 29-599.7. Actions to be in name of District of Columbia; "Corporation Counsel" defined; adjudication of civil infractions.

All civil actions under this chapter which the Mayor is authorized to commence, and all prosecutions for violations of the provisions of this chapter or of regulations promulgated under the authority of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Mayor to perform the functions prescribed for the Corporation Counsel in this chapter. Adjudication of civil infractions shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 105; 1973 Ed., § 29-1099f; Oct. 5, 1985, D.C. Law 6-42, § 431(d), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-583.

References in text. — The "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985", referred to in the last sentence, is D.C. Law 6-42; however, the reference should probably be to titles I through III of that act, the specific provisions relating to alternative sanctions for infractions and adjudication of infractions; these are codified as subchapters I through III of Chapter 27 of Title 6.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-599.8. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 106; 1973 Ed., § 29-1099g.)

§ 29-599.9. Chapter not to affect Internal Revenue Code of 1954.

Nothing in this chapter shall be construed as repealing or affecting any provision of the Internal Revenue Code of 1954. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 107; 1973 Ed., § 29-1099h.)

References in text. — The Internal Revenue Code of 1954, referred to in this section, is codified in Title 26 of the United States Code.

§ 29-599.10. Effect of invalidity of part of chapter.

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 108; 1973 Ed., § 29-1099i.)

§ 29-599.11. Penalty for false statement.

A person who signs any instrument delivered to the Mayor pursuant to this chapter, knowing it to contain a misstatement of fact, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment for not exceeding 1 year, or by both such fine and imprisonment. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 109; 1973 Ed., § 29-1099j; Oct. 5, 1985, D.C. Law 6-42, § 431(e), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-583.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-599.12. Effective date.

This chapter shall take effect 180 days after the date of its approval. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 110; 1973 Ed., § 29-1099k.)

§ 29-599.13. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such

amounts as may be necessary to carry into effect the provisions of this chapter. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 111; 1973 Ed., § 29-1099l.)

§ 29-599.14. Exemption of government agencies from fees levied for Mayor as registered agent.

(a) The agencies of the United States government and the District of Columbia government are exempt from the fees levied for the Mayor acting as a registered agent pursuant to §§ 29-511(b) and 29-574.

(b) In order to qualify for the exemption provided in subsection (a) of this section, the United States government shall pay all postage costs incurred on its behalf pursuant to §§ 29-511(b) and 29-574. (Aug. 6, 1962, Pub. L. 87-569, § 112, as added Mar. 14, 1984, D.C. Law 5-64, § 3(c), 31 DCR 195.)

Cross references. — As to registered agent for service of process on nonprofit corporations, see § 29-511.

As to service of process in liquidation proceedings of nonprofit corporation, see § 29-574.

Legislative history of Law 5-64. — See note to § 29-511.

§ 29-599.15. Immunity from civil liability for a volunteer of the corporation.

(a) For the purposes of this section, the term "volunteer" means an officer, director, trustee, or other person who performs services for the corporation and who does not receive compensation other than reimbursement of expenses for those services.

(b) Any person who serves as a volunteer of the corporation shall be immune from civil liability except where the injury or damage was a result of:

(1) The wilful misconduct of the volunteer;

(2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer;

(4) An act or omission that occurred prior to March 17, 1993; or

(5) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

(c) This section shall apply only if the corporation maintains liability insurance with a limit of coverage of not less than $200,000 per individual claim and $500,000 per total claims that arise from the same occurrence. This subsection shall not apply to any corporation having annual total functional expenses, exclusive of grants and allocations, of less than $100,000, and which is exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code of the United States.

(d) This section shall not be deemed to exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains. (Aug. 6, 1962, Pub. L. 87-569, § 113, as added Mar. 17, 1993, D.C. Law 9-222, § 2, 40 DCR 587.)

Legislative history of Law 9-222. — Law 9-222, the "District of Columbia Nonprofit Corporation Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-316, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-353 and transmitted to both Houses of Congress for its review. D.C. Law 9-222 became effective on March 17, 1993.

References in text. — "Section 501(c)(3) of the Internal Revenue Code of the United States", referred to in subsection (c) of this section, is codified at 26 U.S.C. § 501(c)(3).

§ 29-599.16. Limited liability for an employee of the corporation.

(a) For the purposes of this section, the term "employee" means a person regularly employed to perform a service for a salary or wages.

(b) Except as provided in subsections (c) and (d) of this section, no employee of the corporation shall be held personally liable in damages for any acts or omissions in providing services or performing duties on behalf of the corporation in an amount greater than the amount of total compensation, other than reimbursement of expenses, received from the corporation for performing those services or duties during the 12 months immediately preceding the act or omission for which liability was imposed.

(c) The limitation of liability in this section shall not apply when the injury or damage was a result of:

(1) The wilful misconduct of the employee;

(2) A crime, unless the employee had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the employee;

(4) An act or omission that occurred prior to March 17, 1993; or

(5) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

(d) The limitation of liability in this section shall not apply to any licensed professional employee operating in his or her professional capacity.

(e) This section shall not be deemed to exempt the corporation from liability, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains. (Aug. 6, 1962, Pub. L. 87-569, § 114, as added Mar. 17, 1993, D.C. Law 9-222, § 2, 40 DCR 587.)

Legislative history of Law 9-222. — See note to § 29-599.15.

CHAPTER 6. PROFESSIONAL CORPORATIONS.

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§ 29-601. Short title.

This chapter shall be known and may be cited as the "District of Columbia Professional Corporation Act." (Dec. 10, 1971, 85 Stat. 576, Pub. L. 92-180, § 1; 1973 Ed., § 29-1101.)

Cross references. — As to definition of unincorporated business for tax purposes, see § 47-1808.1.

§ 29-602. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) The term "professional corporation" means a corporation organized under this chapter solely for the specific purposes provided under this chapter, and which has as its shareholders only individuals who themselves are duly licensed to render the same professional service as the corporation.

(2) The term "professional service" means any type of personal service to the public which may be lawfully rendered only pursuant to a license and which by law, custom, standards of professional conduct or practice in the District of Columbia, before December 10, 1971, could not be rendered by a corporation, including without limitation the services performed by certified public accountants, attorneys, architects, practitioners of the healing arts, dentists, optometrists, podiatrists, and professional engineers.

(3) The term "license" or "licensed" refers to a license, certification, certificate, or registration, or other legal authorization required by law as a condition precedent to the rendering of professional service within the District of Columbia.

(4) The term "Council" means the Council of the District of Columbia or the agent or agents designated by it to perform any function vested in the Council by this chapter.

(5) The term "Mayor" means the Mayor of the District of Columbia or his designated agent. (Dec. 10, 1971, 85 Stat. 576, Pub. L. 92-180, § 2; 1973 Ed., § 29-1102.)

Section references. — This section is referred to in § 29-614.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-603. Applicability.

This chapter shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this chapter, nor shall anything herein contained alter or affect any existing or future right or privilege permitting or not prohibiting performance of professional services through the use of any form of business organization. Any corporation organized under Chapter 3 of this title may be brought within the provisions of this chapter by complying with the provisions of this chapter and filing amended or restated articles of incorporation meeting the requirements of § 29-606. (Dec. 10, 1971, 85 Stat. 577, Pub. L. 92-180, § 3; 1973 Ed., § 29-1103.)

§ 29-604. Construction.

The provisions of this chapter shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to corporations, or regulating the several professions covered by this chapter, except insofar as such laws conflict with the provisions of this chapter. Except as otherwise provided by this chapter, the provisions of Chapter 3 of this title shall be applicable to any professional corporation organized under this chapter. (Dec. 10, 1971, 85 Stat. 577, Pub. L. 92-180, § 4; 1973 Ed., § 29-1104.)

§ 29-605. Purpose for organization; powers authorized.

(a) A professional corporation may be organized solely to render professional services through its shareholders, directors, officers, employees, or agents who are themselves duly licensed to render the particular service, and to render service ancillary thereto. A professional corporation may charge for such services, may collect such charges, and may compensate those who render such service. A professional corporation may employ persons who are not licensed, but such persons shall not perform professional services; and no license shall be required of any person who is employed by a professional corporation to perform services for which no license is otherwise required.

(b) No professional corporation may do any act which is prohibited to an individual licensed to render the professional service for which the corporation is organized.

(c) Notwithstanding any provision of this chapter, a professional corporation may:

(1) Invest its funds in real estate, mortgages, stocks, bonds, or other type of investment;

(2) Own real estate or personal property; and

(3) Enter into partnership and other agreements with individuals (who may be shareholders, directors, employees, or agents of the professional corporation), partnerships, or professional corporations rendering the same type of professional services within or without the District of Columbia, to the same extent that an individual licensed to render the same professional service may enter into such partnership or other agreements pursuant to law, rules, regulations, or standards of professional conduct of the profession practiced through the professional corporation. (Dec. 10, 1971, 85 Stat. 577, Pub. L. 92-180, § 5; 1973 Ed., § 29-1105.)

Section references. — This section is referred to in § 29-614.

§ 29-606. Incorporation.

One or more natural persons may incorporate a professional corporation by delivering articles of incorporation in duplicate originals to the Mayor. The articles of incorporation shall meet the requirements of Chapter 3 of this title and, in addition, shall set forth:

(1) The designation of the professional services to be rendered through the corporation;

(2) The names and addresses, including street and number, if any, of the original shareholders of the corporation; and

(3) A statement that each of the original shareholders and directors named in the articles of incorporation is licensed to render a professional service for which the corporation is to be organized. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 6; 1973 Ed., § 29-1106.)

Section references. — This section is referred to in §§ 29-603 and 29-614.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 29-607. Number of directors.

A professional corporation shall have 1 or more directors, without regard to the number of shareholders. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 7; 1973 Ed., § 29-1107.)

§ 29-608. Qualifications of shareholders, director, and officer; "officer" defined.

No person shall be a shareholder, director, or officer of a professional corporation or render professional services on its behalf unless he is an individual licensed to render a professional service for which the corporation is organized, except that if a professional corporation has only 1 shareholder, the secretary of the corporation need not be licensed to perform (and may not perform if not so licensed) such professional services. As used in this section, the term "officer" shall mean chairman of the board, president, vice-president, treasurer, and secretary. Nothing in this chapter shall require a shareholder or incorporator of a professional corporation to have a present or future employment relationship with the corporation or actively to participate in any capacity in the production of income of, or performance of professional service by, such corporation. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 8; 1973 Ed., § 29-1108.)

§ 29-609. Corporate name.

The corporate name shall contain the words "professional corporation", or the abbreviation "P.C.", or the word "chartered", and shall not contain the word "company", "incorporated", "corporation", or "limited", or an abbreviation of 1 of such words. A professional corporation shall render professional services and exercise its authorized powers under its corporate name. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 9; 1973 Ed., § 29-1109.)

Section references. — This section is referred to in § 29-614.

§ 29-610. Proxy prohibited.

No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such voting trust, proxy, or other arrangement shall be void. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 10; 1973 Ed., § 29-1110.)

§ 29-611. Professional relationship; liabilities.

(a) The provisions of this chapter shall not be construed to alter or affect the professional relationship between an individual furnishing professional services and an individual receiving such service, either with respect to liability arising out of such professional service or the confidential relationship, if any, between the individual rendering, and the individual receiving such professional service. An individual shall be personally liable and accountable only for any negligent or wrongful acts or misconduct committed by him, or by any individual under his supervision and control in the rendering of professional service on behalf of a corporation organized under this chapter. No individual

shall be so personally liable and accountable merely because he is a director, officer, or manager of the professional corporation.

(b) The corporation shall be liable up to the full value of its assets for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, directors, agents, or employees in their rendering of professional services on behalf of the corporation. Except as otherwise provided in this section, the liabilities of a professional corporation and its shareholders shall be governed by Chapter 3 of this title. (Dec. 10, 1971, 85 Stat. 578, Pub. L. 92-180, § 11; 1973 Ed., § 29-1111.)

Constructive notice. — Attorney who was a member of a law firm which was a professional corporation and not a partnership could be charged with constructive notice under the Uniform Partnership Act that a special master also represented a client in an unrelated proceeding in which another member of the law firm served as opposing counsel, thereby waiving objections to the special master's report based on the appearance of partiality. Jenkins v. Sterlacci, 856 F.2d 274 (D.C. Cir. 1988).

§ 29-612. Transfer of shares.

(a) Shares in a professional corporation may be transferred only to an individual who is eligible under this chapter to be a shareholder of such corporation, or to such professional corporation, or may devolve by operation of law upon the personal representative or estate of a deceased or legally incompetent shareholder. The articles of incorporation, bylaws, or an agreement among its shareholders may provide that any such transfer shall be subject to the express approval of all, or of any lesser proportion of the remaining shareholders of the corporation, and may provide for the manner in which such consent shall be given. Any transfer made in violation of this section shall be void.

(b) A professional corporation may reacquire its own shares through purchase or redemption, and may cancel such shares if at least 1 share remains issued and outstanding, except when it is insolvent or the purchase or redemption would render it insolvent.

(c) The provisions of Chapter 26 of Title 2, and of the Securities Act of 1933 (15 U.S.C. § 77a et seq.), shall not apply to the issuance or transfer of securities of a professional corporation. Every certificate for shares of a professional corporation shall contain on its face the following legend: "The ownership and transfer of these shares and the rights and obligations of shareholders are subject to the limitations of the District of Columbia Professional Corporation Act."

(d) In the event that shares of a professional corporation are attached for the individual debts of a shareholder, or are executed upon under any pledge or hypothecation thereof, the sole right of the creditor with respect to such shares shall be to obtain their redemption by such professional corporation within 60 days after serving written demand for redemption upon such corporation. The redemption price for such shares shall be:

(1) The amount to which the shareholder is entitled upon voluntary redemption of his shares by the provisions of the articles of incorporation, bylaws, or an agreement among its shareholders, or if there are no such provisions;

(2) The book value of such shares at the end of the month immediately preceding the date of such demand, determined under generally accepted accounting methods consistent with the method of accounting used by the corporation for federal income tax purposes, by an independent certified public accountant selected by the corporation, but paid by such creditor, for the purpose. (Dec. 10, 1971, 85 Stat. 579, Pub. L. 92-180, § 12; 1973 Ed., § 29-1112.)

§ 29-613. Merger or consolidation restricted.

(a) A professional corporation may merge or consolidate only with another domestic professional corporation or a domestic limited liability company, as defined in the District of Columbia Limited Liability Company Act of 1994 (§ 29-1301 et seq.), and only if both entities are organized to render the same professional services, which, although not the same, could otherwise be rendered by a single professional corporation or limited liability company.

(b) No member of a domestic limited liability company that is a party to a merger or consolidation will, as a result of the merger or consolidation, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the agreement of merger or consolidation or otherwise consents to becoming personally liable. (Dec. 10, 1971, 85 Stat. 580, Pub. L. 92-180, § 13; 1973 Ed., § 29-1113; July 23, 1994, D.C. Law 10-138, § 78, 41 DCR 3010.)

Effect of amendments. — D.C. Law 10-138 rewrote the section.

Legislative history of Law 10-138. — Law 10-138, the "Limited Liability Company Act of 1994," was introduced in Council and assigned Bill No. 10-277, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-243 and transmitted to both Houses of Congress for its review. D.C. Law 10-138 became effective on July 23, 1994.

§ 29-614. Foreign professional corporations; requirement for admission to transact business in District; certificate of authority.

Notwithstanding any other provision of this chapter, a foreign professional corporation licensed in a jurisdiction other than the District of Columbia to perform a professional service of the type defined in § 29-602(2), may apply for and obtain a certificate of authority to render such professional services in the District of Columbia under the following terms and conditions:

(1) The articles of incorporation shall meet the requirements of § 29-606, and shall state the address of its registered office in the District of Columbia and the name of its registered agent in the District of Columbia.

(2) The name of the foreign professional corporation shall meet the requirements of § 29-609 and shall conform to any ethical standards applicable to the rendering of professional service in the District of Columbia.

(3) The powers of any foreign professional corporation admitted under this section shall not exceed the powers permitted to domestic professional corporations under § 29-605.

(4) Any foreign professional corporation seeking admission to the District under the provisions of this section shall have at least 1 director or officer as resident agent for its registered office in the District. Additionally, such resident agent and any other shareholder, director, officer, employee, or agent who renders professional services within the District on behalf of the foreign professional corporation shall be licensed to render professional services in the District of Columbia.

(5) An annual report shall be filed in accordance with the requirements of § 29-619.

(6) No certificate of authority shall be granted to a professional corporation incorporated in a jurisdiction which does not permit reciprocal admission of professional corporations incorporated under the laws of the District of Columbia. (Dec. 10, 1971, 85 Stat. 580, Pub. L. 92-180, § 14; 1973 Ed., § 29-1114.)

Cross references. — As to foreign professional corporations considered corporations for income and franchise tax purposes, see § 47-1801.4.

Section references. — This section is referred to in § 47-1801.4.

§ 29-615. Disqualified professional.

If any individual rendering professional services on behalf of a professional corporation assumes a public office which prohibits his rendering of the professional services, or for any other reason is disqualified by law to render the professional services, he immediately shall sever all employment relationships in which he shares in the corporation's profits attributable to professional services rendered after such assumption of office or other disqualification. For the purposes of § 29-616, he shall be referred to as a "disqualified shareholder." (Dec. 10, 1971, 85 Stat. 580, Pub. L. 92-180, § 15; 1973 Ed., § 29-1115.)

§ 29-616. Disposition of stock of disqualified, deceased, legally incompetent shareholder.

(a) Subject to the limitations of this section, a disqualified shareholder and personal representatives, legatees, or heirs of a deceased or legally incompetent shareholder may continue to own shares of a professional corporation but shall not be permitted to participate in any decisions concerning the rendering of professional services by the corporation. The articles of incorporation, bylaws, or an agreement among the shareholders of a professional corporation may provide, consistent with the provisions of this section, for the disposition of shares of a disqualified, deceased, or legally incompetent shareholder.

(b) The articles of incorporation, bylaws, or an agreement among shareholders may provide that, within 90 days (or any earlier date) after the date a shareholder becomes a disqualified shareholder, the disqualified shareholder shall sell and surrender, and the corporation or any individuals qualified to be shareholders shall purchase and receive, his shares of stock of the corporation. In the absence of any such provision, the disqualified shareholder shall sell and

surrender, and the corporation shall purchase and receive, his shares of stock of the corporation within 30 days after the date he becomes a disqualified shareholder. Unless otherwise provided by the articles of incorporation, bylaws, or an agreement among the shareholders, payment for the shares of stock purchased pursuant to the provisons of this subsection shall be made in full no later than 6 months after the expiration of the period by which the purchases must be made.

(c) The articles of incorporation, bylaws, or an agreement among shareholders may provide that, within 1 year (or any earlier date) after the date of death of a shareholder, his personal representative, legatees, or heirs shall sell and surrender, and the corporation or any individuals qualified to be shareholders shall purchase and receive, the shares of stock of the corporation owned by the deceased shareholder. In the absence of any such provision, the personal representatives, legatees, or heirs shall sell and surrender, and the corporation shall purchase and receive, the shares of stock of the corporation within 180 days after the date of death of the shareholder. Unless otherwise provided by the articles of incorporation, bylaws, or an agreement among the shareholders, payment for the shares of stock purchased pursuant to the provisions of this subsection shall be made in full no later than 1 year after the date of death of the shareholder. (Dec. 10, 1971, 85 Stat. 580, Pub. L. 92-180, § 16; 1973 Ed., § 29-1116.)

Section references. — This section is referred to in § 29-615.

§ 29-617. Redemption price.

In the event the articles of incorporation, bylaws or an agreement among the shareholders, do not fix the price at which the corporation or its shareholders may purchase the shares of a disqualified, deceased, legally incompetent, retired, or expelled shareholder, or does not provide a method of determining such price, then the price for such shares shall be the book value of such shares on the last day of the month immediately preceding the disqualification, death, adjudication of incompetence, retirement, or expulsion of the shareholder, determined under generally accepted accounting methods, consistent with the method of accounting used by the corporation for federal income tax purposes, by an independent certified public accountant employed by the corporation for the purpose. (Dec. 10, 1971, 85 Stat. 581, Pub. L. 92-180, § 17; 1973 Ed., § 29-1117.)

§ 29-618. Perpetual existence; dissolution.

A professional corporation shall have perpetual existence, except that whenever all shareholders of a professional corporation cease at any time for any reason to be licensed to perform the professional services for which the corporation was organized, the professional corporation shall be treated as converted into a corporation organized under Chapter 3 of this title. Unless the holders of all of the outstanding shares of the corporation unanimously amend the articles of incorporation to adopt purposes consistent with Chapter 3 of this

title within 60 days after the date on which the last shareholder of the corporation ceased to be licensed to perform those professional services, the dissolution of the corporation shall be deemed to have been authorized by the act of the corporation and any shareholder may at any time thereafter file with the Mayor, on behalf of the corporation, a statement of intent to dissolve. (Dec. 10, 1971, 85 Stat. 582, Pub. L. 92-180, § 18; 1973 Ed., § 29-1118.)

§ 29-619. Annual report; contents.

The annual reports of a professional corporation shall meet the requirements of Chapter 3 of this title and, in addition, shall set forth:

(1) The names and addresses, including street and number, if any, of all shareholders of the corporation; and

(2) A statement that each shareholder, director, and officer of the corporation is currently licensed to render a professional service for which the corporation is organized. (Dec. 10, 1971, 85 Stat. 582, Pub. L. 92-180, § 19; 1973 Ed., § 29-1119.)

Cross references. — As to annual report of foreign professional corporation, see § 29-614.

Section references. — This section is referred to in § 29-614.

§ 29-620. Penalty for noncompliance with chapter.

The failure of a professional corporation to comply, or to require compliance with any provision of this chapter, shall be a ground for the involuntary dissolution of such corporation. Any person, including a corporation, who violates any provision of this chapter or who fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not more than $500 for each violation or failure. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Dec. 10, 1971, 85 Stat. 582, Pub. L. 92-180, § 20; 1973 Ed., § 29-1120; Oct. 5, 1985, D.C. Law 6-42, § 425, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-621. Treatment of professional corporation as unincorporated business for purpose of franchise tax.

Repealed. Sept. 5, 1985, D.C. Law 6-16, § 2(a), 32 DCR 3578.

Legislative history of Law 6-16. — Law 6-16, the "Professional Corporation Franchise Tax Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-101, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 14, 1985, and May 28, 1985, respectively. Signed by the Mayor on June 10, 1985, it was assigned Act No. 6-31 and transmitted to both Houses of Congress for its review.

Application of § 2(a) of Law 6-16. — Section 2(b) of D.C. Law 6-16 provided that § 2(a) of the act, which repealed this section, shall be effective for tax years beginning after December 31, 1984.

CHAPTER 7. BOARDS OF TRADE.

Sec.
29-701. Incorporation; number of incorporators; election of officers; powers of body politic.
29-702. Power to hold real or personal estate.
29-703. Officers — Duties.
29-704. Same — Election; failure to hold.
29-705. Same — Tenure of office.
29-706. Bylaws.
29-707. Penalty for breach of provisions.
29-708. Limitation on authority to do business.

§ 29-701. Incorporation; number of incorporators; election of officers; powers of body politic.

Any number of persons, not less than 20, residing in the District, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and 1 or more vice-presidents, as they may see fit and adopt a name, constitution, and bylaws, such as they may agree upon. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter and change the same at their discretion. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, §§ 701, 702; 1973 Ed., § 29-301.)

Section references. — This section is referred to in § 29-708.

Fact that hospital dissolved its charter and merged with other hospitals and the federal government did not mean that its purpose ceased or that it was defunct. — The fact that hospital joined with two other hospitals and the federal government in a federally mandated hospital center and dissolved its separate corporate charter did not mean that its purpose ceased or that it was defunct and the merger did not terminate a charitable trust of which the hospital was a beneficiary as long as the purposes for which the trust was created were not impaired. Washington Hosp. Ctr. Health Sys. v. Riggs Nat'l Bank, App. D.C., 575 A.2d 719 (1990).

§ 29-702. Power to hold real or personal estate.

Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity 1 city lot and building in the District. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 703; 1973 Ed., § 29-302.)

Section references. — This section is referred to in § 29-708.

§ 29-703. Officers — Duties.

The president, vice-president, secretary, and treasurer shall be ex officio members of the board of directors, and, together with the directors elected, shall manage the business of the corporation. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 704; 1973 Ed., § 29-303.)

Section references. — This section is referred to in § 29-708.

§ 29-704. Same — Election; failure to hold.

All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 705; 1973 Ed., § 29-304.)

Section references. — This section is referred to in § 29-708.

§ 29-705. Same — Tenure of office.

The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected and qualified as prescribed by such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 706; 1973 Ed., § 29-305.)

Section references. — This section is referred to in § 29-708.

§ 29-706. Bylaws.

Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any bylaw of the corporation; and in all cases the constitution and bylaws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 707; 1973 Ed., § 29-306.)

Section references. — This section is referred to in § 29-708.

§ 29-707. Penalty for breach of provisions.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or bylaws; but no fine shall in any case exceed $25. Such fines may be collected by action of debt, brought in the name of the corporation, before the Superior Court of the District of Columbia, against the person upon whom the fine shall have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 29-307.)

Section references. — This section is referred to in § 29-708.

§ 29-708. Limitation on authority to do business.

Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in §§ 29-701 to 29-707. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 709; 1973 Ed., § 29-308.)

CHAPTER 7A. FOREIGN TRADE ZONES.

Sec.
29-721. Definitions.
29-722. Authority to establish, operate, and maintain a foreign trade zone.
29-723. Licensing and taxation.
29-724. Jurisdiction.

§ 29-721. Definitions.

For the purposes of this chapter, the term:

(1) "Private corporation" means any corporation, other than a public corporation, organized for the purpose of establishing, operating, and maintaining a foreign trade zone.

(2) "Public corporation" means the District of Columbia government or an agency of the District of Columbia government or similar organization that is financed in whole or in part by public funds. (July 14, 1995, D.C. Law 11-28, § 2, 42 DCR 2569.)

Legislative history of Law 11-28. — Law 11-28, the "Foreign Trade Zones Act of 1995," was introduced in Council and assigned Bill No. 11-97, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 4, 1995, and May 18, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-56 and transmitted to both Houses of Congress for its review. D.C. Law 11-28 became effective on July 14, 1995.

§ 29-722. Authority to establish, operate, and maintain a foreign trade zone.

(a) Any private corporation or public corporation may make application for the privilege of establishing, operating, and maintaining a foreign trade zone or subzone in the District of Columbia, pursuant to 19 USC §§ 81a-81u. Following approval of the application by the Foreign Trade Zones Board established pursuant to 19 USC §§ 81a-81u the private corporation or public corporation shall take all actions necessary to comply with the 19 USC §§ 81a-81u and any other applicable laws, rules, and regulations adopted in accordance with the 19 USC §§ 81a-81u.

(b) Any activity in the District of Columbia authorized by the 19 USC §§ 81a-81u to be conducted within a foreign trade zone or subzone:

(1) May be conducted within a foreign trade zone or subzone operated by a private corporation or public corporation within the District of Columbia; and

(2) Shall comply with the Zoning Regulations of the District of Columbia set forth in title 11 of the District of Columbia Municipal Regulations (11 DCMR). (July 14, 1995, D.C. Law 11-28, § 3, 42 DCR 2569.)

Legislative history of Law 11-28. — See note to § 29-721.

§ 29-723. Licensing and taxation.

Except as provided by the 19 USC §§ 81a-81u, or by other Federal or District law, all activities and entities operating within a foreign trade zone that is

established within the District of Columbia shall be subject to all applicable District licenses, permits, and taxation. (July 14, 1995, D.C. Law 11-78, § 4, 42 DCR 2569.)

Legislative history of Law 11-28. — See note to § 29-721.

§ 29-724. Jurisdiction.

The District of Columbia reserves jurisdiction in a foreign trade zone or subzone in all civil and criminal matters not relating to customs or federal diversity or federal jurisdiction. (July 14, 1995, D.C. Law 11-28, § 5, 42 DCR 2569.)

Legislative history of Law 11-28. — See note to § 27-721.

CHAPTER 8. INSTITUTIONS OF LEARNING.

Sec.
29-801. Incorporation — Number; filing and recordation of certificate; content.
29-802. Same — Powers of body politic and corporate.
29-803. Corporate powers.
29-804. Property to be held for educational purposes.
29-805. Funds — Application.
29-806. Same — Acceptance of donations, devises, or bequests for particular purposes.
29-807. Land — Restriction on holdings.
29-808. Same — Reversion of excess.
29-809. Officers; powers and duties.
29-810. Treasurer; bond required.
29-811. Annual statement; filing and recordation; contents.
29-812. Service of process against corporation.
29-813. Quo warranto.
29-814. Incorporation fee.
29-815. License to confer degrees — Issuance by Educational Institution Licensure Commission required.
29-816. Same — Application; filing and recordation; use of public school personnel authorized.
29-817. Same — Revocation of license; notice; hearing before Commission; review.
29-818. Title of institution not to imply official connection with government of United States or District of Columbia; prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia; license not to be denied merely because of use of prohibited words.
29-819. Penalties for conferral of degrees without licenses.
29-820. Exemption of institutions of higher learning from usury law.

§ 29-801. Incorporation — Number; filing and recordation of certificate; content.

Any 5 or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the Recorder of Deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

(1) The name or title by which the institution shall be known in law;

(2) The number of trustees, directors, or managers, and their names;

(3) The particular branch of literature and science, or either of them, proposed to be taught; and

(4) If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 574; 1973 Ed., § 29-401.)

Cross references. — As to religious schools, see § 29-912.

As to medical and dental colleges, see Chapter 17 of Title 31.

As to Gallaudet University, see Chapter 18 of Title 31.

Institutions of learning defined. — Institutions of learning, within the meaning of this section, are organizations of a permanent nature where instructions are given only in the higher branches of education, and which owe their origin to private or public munificence, and are established not for private gain but for the public good. United States ex rel. Chicago Bus. College v. Payne, 20 App. D.C. 606 (1902).

§ 29-802. Same — Powers of body politic and corporate.

Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate,

by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such bylaws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 575; 1973 Ed., § 29-402.)

Cross references. — As to conferring degrees, see § 29-815.

§ 29-803. Corporate powers.

Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 576; 1973 Ed., § 29-403.)

Cross references. — As to exemption of institutions of higher education from usury law, see § 29-820.

Power to confer degrees. — There is nothing in this section which says that the corporation thus formed shall have the power to confer degrees, or admit its members to degrees, or to issue to its members a certificate pertaining to degrees. National Ass'n of CPAs v. United States, 292 F. 668 (D.C. Cir. 1923).

Tax exemption. — A corporation organized under this chapter is entitled to exemption from real and personal property tax under the statute exempting property that is used for educational purposes. District of Columbia v. Mt. Vernon Sem., 100 F.2d 116 (D.C. Cir. 1938).

§ 29-804. Property to be held for educational purposes.

Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 577; 1973 Ed., § 29-404.)

Cited in District of Columbia v. Mt. Vernon Sem., 100 F.2d 116 (D.C. Cir. 1938).

§ 29-805. Funds — Application.

The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of said institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 578; 1973 Ed., § 29-405.)

Cross references. — As to management of institutional funds, see § 32-401 et seq.

§ 29-806. Same — Acceptance of donations, devises, or bequests for particular purposes.

In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 579; 1973 Ed., § 29-406.)

§ 29-807. Land — Restriction on holdings.

No such corporation shall hold more land at any 1 time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within 15 years from the time the title thereto is acquired. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 580; 1973 Ed., § 29-407.)

Section references. — This section is referred to in § 29-808.

§ 29-808. Same — Reversion of excess.

On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in § 29-807 shall revert to the original donor, grantor, devisor, or their heirs. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 581; 1973 Ed., § 29-408.)

Cited in Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

§ 29-809. Officers; powers and duties.

Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 582; 1973 Ed., § 29-409.)

§ 29-810. Treasurer; bond required.

Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 583; 1973 Ed., § 29-410.)

§ 29-811. Annual statement; filing and recordation; contents.

It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the Recorder of Deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 584; 1973 Ed., § 29-411.)

§ 29-812. Service of process against corporation.

All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least 60 days before the return day thereof. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 585; 1973 Ed., § 29-412.)

§ 29-813. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the Superior Court of the District of Columbia, a writ of quo warranto shall issue, and the United States Attorney shall prosecute, on behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(1)(G); 1973 Ed., 29-413.)

Cross references. — As to quo warranto proceedings, see § 16-3501 et seq.

§ 29-814. Incorporation fee.

The fee payable to the Recorder of Deeds for filing the certificate of incorporation under this chapter shall be $25. (Mar. 3, 1901, ch. 854, § 586a; Mar. 2, 1929, 45 Stat. 1503, ch. 523; 1973 Ed., § 29-414.)

Section references. — This section is referred to in §§ 29-816 and 29-819.

§ 29-815. License to confer degrees — Issuance by Educational Institution Licensure Commission required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership

or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Educational Institution Licensure Commission, which before granting any such license may require satisfactory evidence:

(1) That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning;

(2) That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree; provided, that if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred; provided further, that no diploma shall be issued conferring a degree in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence;

(3) That applicants for said degree possess the usual high school qualifications at the time of their candidacy therefor; and

(4) That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the institution is possessed of suitable classroom, laboratory, and library equipment. (Mar. 3, 1901, ch. 854, § 586b; Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; 1973 Ed., § 29-415; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(1), 23 DCR 8734.)

Cross references. — As to licensing of institutions by Educational Institution Licensure Commission, see § 31-1601 et seq.

As to authority of Council to regulate license requirements, see §§ 47-2842 and 47-2844.

Section references. — This section is referred to in §§ 29-816, 29-817, 29-819, and 31-1517.

Legislative history of Law 1-104. — Law 1-104, the "Education Licensure Commission Act of 1976," was introduced in Council and assigned Bill No. 1-293, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on September 15, 1976, and October 12, 1976, respectively. Approved without the signature of the Mayor on November 18, 1976, it was assigned Act No. 1-177 and transmitted to both Houses of Congress for its review.

Licensing requirement does not violate First Amendment. — Licensing requirement is not inherently, or as applied, an unreasonable limitation of educational institutions' right to free speech and academic freedom in violation of the First Amendment nor are the statutory standards for licensure impermissibly vague. Nova Univ. v. Educational Inst. Licensure Comm'n, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985).

Section not discriminatory. — In the phrase "may require satisfactory evidence" at the end of the undesignated language in this section, the word "may" has a mandatory significance and does not confer upon the Commission the choice whether or not to require proof before granting a license, and hence this section is not discriminatory. Kraft v. Board of Educ., 247 F. Supp. 21 (D.D.C. 1965), cert. denied, 386 U.S. 958, 87 S. Ct. 1026, 18 L. Ed. 2d 106 (1967).

In an action to set aside an order of the Commission revoking the license of the plaintiff to confer the degree of Bachelor of Fine Arts, the evidence must be considered from the standpoint most favorable to the Commission. The court will not weigh the evidence on both sides, but will merely determine whether there is sufficient evidence to support the findings. Kraft v. Board of Educ., 247 F. Supp. 21 (D.D.C. 1965), cert. denied, 386 U.S. 958, 87 S. Ct. 1026, 18 L. Ed. 2d 106 (1967).

Commission did not err in denying license to confer degrees because the Florida university seeking a license to offer doctorate degree courses in the District of Columbia had no library of its own in D.C. and did not meet the District's requirements for adequate full-

time faculty in D.C. Nova Univ. v. Educational Inst. Licensure Comm'n, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985).

§ 29-816. Same — Application; filing and recordation; use of public school personnel authorized.

Application for the license referred to in § 29-815 shall be in writing upon forms prepared under the direction of the Educational Institution Licensure Commission, and shall be filed with the Secretary of the said Commission, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the Recorder of Deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Educational Institution Licensure Commission is hereby authorized to employ the personnel of the public school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under §§ 29-814 to 29-819, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Educational Institution Licensure Commission as it may from time to time consider necessary or desirable for the better performance of its duties under §§ 29-814 to 29-819. (Mar. 3, 1901, ch. 854, § 586c; Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; 1973 Ed., § 29-416; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(2), 23 DCR 8734.)

Cross references. — As to licensing of institutions by Educational Institution Licensure Commission, see § 31-1601 et seq.

Section references. — This section is referred to in § 29-819.

Legislative history of Law 1-104. — See note to § 29-815.

§ 29-817. Same — Revocation of license; notice; hearing before Commission; review.

A license once issued may be revoked by said Educational Institution Licensure Commission for noncompliance on the part of any individual or individuals, associations, or incorporated institutions so licensed with the provisions of § 29-815. Upon the revocation of any such license it shall be the duty of the secretary of the Educational Institution Licensure Commission, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the Recorder of Deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked; provided, however, that 30 days notice shall first have been given to such individual or individuals, associations, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Educational Institution Licensure Commission at either a public or nonpublic session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said commission shall act in the revocation of such license

shall be committed to writing under the direction of the commission, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked; and provided further, that any party aggrieved by the action of said commission in refusing to license or in revoking a license previously granted may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, §§ 1-1501 to 1-1510). (Mar. 3, 1901, ch. 854, § 586d; Mar. 2, 1929, 45 Stat. 1504, ch. 523; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; July 29, 1970, 84 Stat. 582, Pub. L. 91-358, title I, § 163(a); 1973 Ed., § 29-417; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(3), 23 DCR 8734.)

Cross references. — As to licensing of institutions by Educational Institution Licensure Commission, see § 31-1601 et seq.

Section references. — This section is referred to in §§ 29-816 and 29-819.

Legislative history of Law 1-104. — See note to § 29-815.

In an action to set aside an order of the Commission revoking the license of the plaintiff to confer the degree of Bachelor of Fine Arts, the evidence must be considered from the standpoint most favorable to the Commission. The court will not weigh the evidence on both sides, but will merely determine whether there is sufficient evidence to support the findings. Kraft v. Board of Educ., 247 F. Supp. 21 (D.D.C. 1965), cert. denied, 386 U.S. 958, 87 S. Ct. 1026, 18 L. Ed. 2d 106 (1967).

The court may consider whether the Commission was guilty of any error of law, whether its findings of fact were supported by substantial evidence, and whether its decision was arbitrary or capricious, but the court may not review the weight of evidence and reach an independent conclusion on the basis of the evidence presented at the hearing before the Commission. Kraft v. Board of Educ., 247 F. Supp. 21 (D.D.C. 1965), cert. denied, 386 U.S. 958, 87 S. Ct. 1026, 18 L. Ed. 2d 106 (1967).

§ 29-818. Title of institution not to imply official connection with government of United States or District of Columbia; prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia; license not to be denied merely because of use of prohibited words.

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Educational Institution Licensure Commission as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall

be subject to the penalty hereinafter set forth in § 29-819; provided, that no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Educational Institution Licensure Commission, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. The Educational Institution Licensure Commission ("Commission") may, for good cause shown, waive the prohibition of this section for any non-profit educational institution incorporated and licensed in any jurisdiction if:

(1) The institution clearly indicates to the Commission's satisfaction that it is not and does not hold itself out as or affiliated with an institution of the District of Columbia government or the federal government;

(2) The institution provides statements in a conspicuous place in all of its publications, advertising, and student contracts that the institution is not affiliated with the federal or District government;

(3) The institution is accredited by an accrediting association recognized by the United States Secretary of Education; and

(4) The institution otherwise meets all applicable licensing requirements. (Mar. 3, 1901, ch. 854, § 586e; Mar. 2, 1929, 45 Stat. 1505, ch. 523, Apr. 16, 1934, 48 Stat. 592, ch. 143; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; 1973 Ed., § 29-418; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(4), 23 DCR 8734; Sept. 21, 1988, D.C. Law 7-142, § 2, 35 DCR 5401.)

Section references. — This section is referred to in §§ 29-816 and 29-819.

Legislative history of Law 1-104. — See note to § 29-815.

Legislative history of Law 7-142. — Law 7-142, the "Educational Institution Licensure Commission Institution Title Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-253, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 14, 1988, and June 28, 1988, respectively. Signed by the Mayor on June 30, 1988, it was assigned Act No. 7-194 and transmitted to both Houses of Congress for its review.

§ 29-819. Penalties for conferral of degrees without licenses.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of §§ 29-814 to 29-819, or who shall violate the provisions of § 29-818 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine of not more than $2,000, or imprisonment for not more than 2 years, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section, shall be

pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, ch. 854, § 586f; Mar. 2, 1929, 45 Stat. 1505, ch. 523; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(1)(H); 1973 Ed., § 29-419; Oct. 5, 1985, D.C. Law 6-42, § 470(a), 32 DCR 4450.)

Section references. — This section is referred to in §§ 29-816 and 29-818.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Cited in Nova Univ. v. Educational Inst. Licensure Comm'n, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985).

§ 29-820. Exemption of institutions of higher learning from usury law.

Any institution of higher education located in the District of Columbia and described in the first sentence of § 1141(a) of Title 20 of the United States Code (other than District of Columbia Teachers' College, Federal City College, Gallaudet College, and Howard University) may borrow money at such rates of interest as the institution may determine, without regard to the restrictions of any usury law applicable in the District of Columbia, and shall not plead any statutes against usury in any action. (Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title IV, § 402; 1973 Ed., § 29-421.)

Cross references. — As to statutes against usury, see § 28-3303.

CHAPTER 9. RELIGIOUS SOCIETIES.

Sec.
29-901. Acquisition of land restricted.
29-902. Trustees.
29-903. Trustees or directors — Certificate of election or appointment; filing and recordation.
29-904. Same — Tenure of office; vacancies; rules and regulations; removal.
29-905. Same — Successors; filing and recording certificate of election or appointment.
29-906. Same — Effect of failure to elect.
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§ 29-901. Acquisition of land restricted.

It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 587; 1973 Ed., § 29-501.)

Cross references. — As to rate of interest expressed in contract, see § 28-3301.

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Legal rights conferred on members of a society or congregation. — Nothing in the Code confers legal rights on 2 subsets of church membership; the Code refers only to 1 membership and to the board of trustees, and it speaks only of the rights of members of the society or congregation, not the rights of the "corporate" body or "attendants who are regular contributors." Williams v. Board of Trustees, App. D.C., 589 A.2d 901, cert. denied, 502 U.S. 865, 112 S. Ct. 190, 116 L. Ed. 2d 151 (1991).

Expelled members lacked standing to seek a declaratory judgment that this chapter and the charter of the church precluded the pastor and the board of trustees from selling the church's historic sanctuary building without a vote of the members to amend the church's charter. Williams v. Board of Trustees, App. D.C., 589 A.2d 901, cert. denied, 502 U.S. 865, 112 S. Ct. 190, 116 L. Ed. 2d 151 (1991).

Cited in Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

§ 29-902. Trustees.

Such society or congregation may assume a name, and any number of trustees, not exceeding 10, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 588; 1973 Ed., § 29-502.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

§ 29-903. Trustees or directors — Certificate of election or appointment; filing and recordation.

The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of 1 of the persons making the same, and shall be filed and recorded in the office of the Recorder of Deeds of the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 589; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-503.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

§ 29-904. Same — Tenure of office; vacancies; rules and regulations; removal.

The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 590; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-504.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Legal rights conferred on members of a society or congregation. — Nothing in the Code confers legal rights on 2 subsets of church membership; the Code refers only to 1 membership and to the board of trustees, and it speaks only of the rights of members of the society or congregation, not the rights of the "corporate" body or "attendants who are regular contributors." Williams v. Board of Trustees, App. D.C., 589 A.2d 901, cert. denied, 502 U.S. 865, 112 S. Ct. 190, 116 L. Ed. 2d 151 (1991).

Expelled members lacked standing to seek a declaratory judgment that this chapter and the charter of the church precluded the pastor and the board of trustees from selling the church's historic sanctuary building without a vote of the members to amend the church's charter. Williams v. Board of Trustees, App. D.C., 589 A.2d 901, cert. denied, 502 U.S. 865, 112 S. Ct. 190, 116 L. Ed. 2d 151 (1991).

§ 29-905. Same — Successors; filing and recording certificate of election or appointment.

At the expiration of the term of service of any of the trustees or directors 1 or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded, as provided hereinbefore. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 591; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-505.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

§ 29-906. Same — Effect of failure to elect.

A failure to elect or appoint trustees or directors at the proper time shall not work a dissolution of the society or congregation; but the trustees or directors last elected or appointed shall be considered as in office until another election or appointment shall take place. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 592; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-506.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

§ 29-907. Same — Corporate powers.

Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whosoever, in and by the name and style assumed as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 593; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-507.)

Cross references. — As to management of institutional funds, see § 32-401 et seq.

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Action brought in name of trustees. — An action by the trustee of a church to recover church property may be brought in the name of the trustees, and is not required to be brought in the corporate name of the church. Stevenson v. Reed, App. D.C., 96 A.2d 268 (1953).

§ 29-908. Same — Title to land vested.

The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees or directors by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 594; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-508.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Cited in Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

§ 29-909. Same — Powers to convey property.

The trustees or directors shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest and all grants, donations, and bequests shall be appropriated and used as directed by the person making the same. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 595; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-509.)

Cross references. — As to formal requisites for conveyances of real estate, see § 45-502.

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Cited in Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

§ 29-910. Same — Power to mortgage; term of holdings or lease.

The trustees or directors shall have power under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold or to lease the same for a term not exceeding 10 years; and such mortgages, deeds, and conveyances shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 596; June 26, 1922, 42 Stat. 665, ch. 241; 1973 Ed., § 29-510.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Cited in Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

§ 29-911. Dissolution; reversion of property to donors.

Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 597; 1973 Ed., § 29-511.)

Section references. — This section is referred to in §§ 28-3301 and 29-912.

Constitutionality. — This section's provision that church property reverts to the contributors of the property upon dissolution of the church does not violate the free exercise clause of U.S. Const., amend. 1. Prince v. Firman, App. D.C., 584 A.2d 8 (1990).

Purpose of section. — This section is an obscure section of statutory law dealing with the dissolution of certain religious societies. Prince v. Firman, App. D.C., 623 A.2d 622 (1993).

This section, like a law of intestate succession, answers the question of who has the right to ownership and possession of property once the corporation, the artificial legal entity, is no longer itself in existence to assert such ownership. Prince v. Firman, App. D.C., 623 A.2d 622 (1993).

Section only applicable upon dissolution. — This section is not applicable where a religious society whose members have decided to terminate its existence are still active in making decisions concerning termination, as the society is not yet "dissolved" and thus not yet bound to transfer its property only pursuant to this section. Prince v. Firman, App. D.C., 623 A.2d 622 (1993).

Where the religious society was clearly an existing corporate entity, even though regular worship services had ceased; where its constitution and by-laws contained a broad definition of the object of the church, and the membership and trustees were, in their actions of disbursing church assets, acting pursuant thereto; and where the trustees who held the remaining assets of the society were continuing to act in their capacity as designated trustees of the church and were entrusted with the task of disbursing the funds in accordance with the previously adopted instructions of the membership, no situation involving a gap in ownership presented itself for the application of the provision designating the ownership of property to ensue "upon dissolution" of the society. Prince v. Firman, App. D.C., 623 A.2d 622 (1993).

Section applicable regardless of how dissolution accomplished. — Whether the dissolution is the result of an agreement on the part of the former members or is accomplished by abandonment and nonuse, this section applies and in either case the property reverts. Rose Campbell Mission v. Richardson, 73 F.2d 661 (D.C. Cir. 1934).

Abandonment of purpose for creation. — When for practically 20 years, a religious society or collective body has done nothing to sustain the work for which it was organized, it cannot be said to have an existence, because it has definitely abandoned the purpose of its creation and ceased to exercise its functions. Rose Campbell Mission v. Richardson, 73 F.2d 661 (D.C. Cir. 1934).

§ 29-912. Religious schools.

The provisions of §§ 29-901 to 29-911 are intended to extend to members of societies formed to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 598; 1973 Ed., § 29-512.)

Section references. — This section is referred to in § 28-3301.

§ 29-913. Conveyances to religious congregations; not void for want of trustees.

Where any conveyance or devise of real estate is made for the use and benefit of any religious congregation as a place of public worship, such conveyance or devise shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed as provided in § 29-914. (R.S., D.C., § 453; 1973 Ed., § 29-513.)

Section references. — This section is referred to in § 28-3301.

§ 29-914. Trustees — Procedure for appointment to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the court having probate jurisdiction shall, on application of the United States Attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R.S., D.C., § 454; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(a)(2); 1973 Ed., § 29-514.)

Cross references. — As to court having probate jurisdiction, see §§ 11-501 and 11-921.

Section references. — This section is referred to in §§ 28-3301 and 29-913.

§ 29-915. Same — Suits for title, possession or enjoyment of property.

A majority of the acting trustees for any such congregation may sue and be sued in their own names, in relation to the title, possession, or enjoyment of such property, without abatement by the death of any of the trustees, or substitution of others; and the action or suit may be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings had in relation thereto, in like manner as if such death or substitution had not occurred. (R.S., D.C., § 455; 1973 Ed., § 29-515.)

Section references. — This section is referred to in § 28-3301.

Action brought in name of trustees. — An action by the trustees of a church to recover church property may be brought in the name of the trustees and is not required to be brought in the corporate name of the church. Stevenson v. Reed, App. D.C., 96 A.2d 268 (1953).

Standing of church members to bring suit as trust beneficiaries. — Bona fide members of a church have standing to bring suit as trust beneficiaries when there is a dispute over the use or disposition of church property. Mount Jezreel Christians Without a Home v. Board of Trustees, App. D.C., 582 A.2d 237 (1990).

§ 29-916. Limitations on use of land.

Land authorized to be conveyed and held subsequent to June 17, 1844, and prior to May 5, 1870, for the uses of any religious congregation, in quantity not exceeding 50 acres, if in the District outside of the Cities of Washington and Georgetown, nor exceeding 3 acres, if in either of said Cities, shall not be held by the trustees of such congregation for any other use than as a place of public worship, religious or other instruction, burial ground, or residence of their minister. (R.S., D.C., § 456; 1973 Ed., § 29-516.)

Section references. — This section is referred to in § 28-3301.

CHAPTER 10. CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS.

Sec.
29-1001. Incorporation — Number of incorporators required; filing and recording certificate; contents.
29-1002. Same — Powers of body politic and corporate; taxation of property.
29-1003. Trustees; directors and managers; powers; quorum; vacancies; methods of voting.
29-1004. Reincorporation; extension of time of corporate existence; vote required for approval of name change.
29-1005. Power to lease, mortgage, and sell corporate property.
29-1006. Name of corporation.

§ 29-1001. Incorporation — Number of incorporators required; filing and recording certificate; contents.

Any 3 or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgement of deeds in the District, and file in the office of the Recorder of Deeds, to be recorded by him, a certificate in writing, in which shall be stated:

(1) The name or title by which such society shall be known in law;

(2) The term for which it is organized, which may be perpetual;

(3) The particular business and objects of the society; and

(4) The number of its trustees, directors, or managers for the first year of its existence. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 599; 1973 Ed., § 29-601.)

Cross references. — As to provisions deemed contained in governing instrument of corporation or association treated as a tax-exempt private foundation, see § 29-531.

As to religious schools, see § 29-912.

As to Educational Institution Licensure Commission, see §§ 31-1601 to 31-1612.

As to medical and dental colleges, see § 31-1701 et seq.

As to eleemosynary, curative, correctional, and penal institutions, see Title 32.

Corporation cannot deny that its purposes are those set forth in its charter. — See Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd., App. D.C., 34 A.2d 614 (1943).

Corporation organized under this section has no power to confer degrees. — See National Ass'n of CPAs v. United States, 292 F. 668 (D.C. Cir. 1923).

Cited in Creswill v. Grand Lodge Knights of Pythias, 225 U.S. 246, 32 S. Ct. 822, 56 L. Ed. 1074 (1912); Ancient Egyptian Arabic Order v. Michaux, 279 U.S. 737, 49 S. Ct. 485, 73 L. Ed. 931 (1929); Rose Campbell Mission v. Richardson, 73 F.2d 661 (D.C. Cir. 1934); White v. Central Dispensary & Emergency Hosp., 99 F.2d 355 (D.C. Cir. 1938); Jordan v. Group Health Ass'n, 107 F.2d 239 (D.C. Cir. 1939); Rock Creek Gardens Tenants Ass'n v. Ferguson, App. D.C., 404 A.2d 972 (1979).

§ 29-1002. Same — Powers of body politic and corporate; taxation of property.

Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and

change the same at pleasure, and may make bylaws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the income from which shall be applied to the purposes of such society; provided, however, that this section shall not be construed to exempt any property from taxation in addition to that specifically exempted by law. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 600; Apr. 20, 1932, 47 Stat. 87, ch. 121; 1973 Ed., § 29-602.)

Cross references. — As to formal requisites for conveyances of real estate, see § 45-502.

Requirement for exemption from real estate tax. — In order to qualify under the statute exempting real estate belonging to educational institutions from taxation in the District of Columbia, the institution must render a service which relieves the District of a burden it otherwise might assume. Washington Chapter of Am. Inst. of Banking v. District of Columbia, 203 F.2d 68 (D.C. Cir. 1953).

Cited in Jordan v. Group Health Ass'n, 107 F.2d 239 (D.C. Cir. 1939); Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd., App. D.C., 34 A.2d 614 (1943).

§ 29-1003. Trustees; directors and managers; powers; quorum; vacancies; methods of voting.

Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business, unless a less number be specified as a quorum in the bylaws; and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the bylaws of the society. The bylaws of a society incorporated under the provisions of this chapter may provide that stockholders, if the same be a stock corporation, or members or delegates, if the same be not a stock corporation, may vote by proxy or by mail. The bylaws may restrict such method of voting to the election of trustees, directors, or managers, or to other matters specified in the bylaws, and may prescribe the form or forms of proxy or of mail ballot to be used and the procedure to be followed in the casting and recording of such votes. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 601; June 10, 1930, 46 Stat. 538, ch. 439; Nov. 30, 1945, 59 Stat. 588, ch. 497; Aug. 7, 1946, 60 Stat. 882, ch. 781; 1973 Ed., § 29-603.)

Cited in United States v. Mount Vernon Mtg. Corp., 128 F. Supp. 629 (D.D.C. 1954), aff'd, 236 F.2d 724 (D.C. Cir. 1956), cert. denied, 352 U.S. 988, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

§ 29-1004. Reincorporation; extension of time of corporate existence; vote required for approval of name change.

Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this chapter, including societies formed for mutual improvement, may reincorporate or may continue the term of its existence beyond the time specified in its

original certificate of incorporation, or bylaw, or in any certificate of continuance of corporate existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the Recorder of Deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 602; Mar. 3, 1905, 33 Stat. 1012, ch. 1445; 1973 Ed., § 29-604.)

Cited in Schooley v. Dimmick, 13 F.2d 956 (D.C. Cir. 1926).

§ 29-1005. Power to lease, mortgage, and sell corporate property.

Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the use and benefit of such corporation. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 603; 1973 Ed., § 29-605.)

Cross references. — As to formal requisites for conveyances of real estate, see § 45-502.

§ 29-1006. Name of corporation.

The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the Recorder of Deeds use or specify a name or style the same as that of any other incorporated body in the District. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 604; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 29-606.)

CHAPTER 11. COOPERATIVE ASSOCIATIONS.

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§ 29-1101. Definitions.

In this chapter unless the subject matter requires otherwise:

(1) "Association" means a group enterprise legally incorporated under this chapter, and shall be deemed to be a nonprofit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of § 29-1131 herein.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in §§ 29-1104(7), 29-1113, 29-1123, 29-1137, 29-1140, and 29-1141 herein means:

(A) That each member has 1 vote and only 1 vote, except as may be altered in the articles or bylaws by provision for:

(i) Voting by member organizations; or

(ii) Allocation of votes in a cooperative housing association proportionate to the share of ownership in the association or on the basis of 1 vote for each unit;

(B) That the maximum rate at which any return is paid on share or membership capital is limited to not more than 8% per annum; and

(C) That the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or bylaws, or allocated or distributed to member patrons, or to all patrons, in proportion to their patronage, be retained by the enterprise, for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character. (June 19, 1940, 54 Stat. 480, ch. 397, § 1; 1973 Ed., § 29-801; Mar. 14, 1984, D.C. Law 5-57, § 2(a), 30 DCR 6290; June 29, 1984, D.C. Law 5-92, § 2(a), 31 DCR 2542.)

Cross references. — As to definitions of provisions regarding real estate licenses, see § 45-1922.

Section references. — This section is referred to in § 45-1603.

Legislative history of Law 5-57. — Law 5-57, the "District of Columbia Cooperative Housing Association Proportionate Voting Temporary Act of 1983," was introduced in Council and assigned Bill No. 5-317. The Bill was adopted on first and second readings on November 1, 1983, and November 15, 1983, respectively. Signed by the Mayor on November 21, 1983, it was assigned Act No. 5-85 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-92. — Law 5-92, the "District of Columbia Cooperative Housing Association Proportionate Voting Act of 1984," was introduced in Council and assigned Bill No. 5-202, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-133 and transmitted to both Houses of Congress for its review.

Cited in Rock Creek Gardens Tenants Ass'n v. Ferguson, App. D.C., 404 A.2d 972 (1979); Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983); Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988).

§ 29-1102. Incorporators.

Any 5 or more natural persons or 2 or more associations may incorporate in the District of Columbia under this chapter. (June 19, 1940, 54 Stat. 481, ch. 397, § 2; 1973 Ed., § 29-802.)

§ 29-1103. Purposes for incorporation.

An association may be incorporated under this chapter to engage in any 1 or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers. (June 19, 1940, 54 Stat. 481, ch. 397, § 3; 1973 Ed., § 29-803.)

Cited in Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983).

§ 29-1104. Powers of association.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this chapter and also:

(1) To continue as a corporation for the time specified in its articles;

(2) To have a corporate seal and to alter the same at pleasure;

(3) To sue and be sued in its corporate name;

(4) To make bylaws for the government and regulation of its affairs;

(5) To acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;

(6) To own and hold membership in and share capital of other associations and any other corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

(7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) To conduct its affairs within or without the District of Columbia;

(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this chapter; and

(10) To exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive. (June 19, 1940, 54 Stat. 481, ch. 397, § 4; 1973 Ed., § 29-804.)

Section references. — This section is referred to in § 29-1101.

Collateral attack only assertable by District. — A collateral attack upon the creation and existence of a cooperative, and an alleged want of capacity to own and dispose of real estate can only be asserted by the District, and not by parties to a private dispute. Glennon v. Butler, App. D.C., 66 A.2d 519 (1949).

§ 29-1105. Articles of incorporation — Contents.

(a) Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least 3 of them if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments.

(b) Within the limitations of this chapter the articles shall contain:

(1) A statement as to the purpose or purposes for which the association is formed;

(2) The name of the association which shall include the word "cooperative";

(3) The term of existence of the association which may be perpetual;

(4) The location and address of the principal office of the association;

(5) The names and addresses of the incorporators of the association;

(6) The names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) A statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) If organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value thereof which may be placed at any figure, and the rights, preferences, and restrictions of each type of share;

(9) The minimum number or value of shares which must be owned in order to qualify for membership; if organized without shares, a statement of whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined;

(10) The maximum amount or percentage of capital which may be owned or controlled by any member; including a statement of whether or not each member shall be limited to a single share, and whether such single shares shall be of various par values; and

(11) The method by which any surplus, upon dissolution of the association, shall be distributed, in conformity with the requirements of § 29-1136 herein for division of such surplus.

(c) The articles may also contain any other provisions not inconsistent with law or with this chapter, for the conduct of the association's affairs. (June 19, 1940, 54 Stat. 481, ch. 397, § 5; 1973 Ed., § 29-805.)

§ 29-1106. Same — Procedure for filing and recordation; effect of certificate; quo warranto proceedings not precluded.

The articles shall be delivered to the Recorder of Deeds. If he finds that the articles conform to law, he shall file the same upon the payment of a fee of $5, and he shall record the same, upon payment of a fee of $1. Said fees shall be in lieu of any other fees or payments provided in § 45-909, or in any other section of the Code of Laws of the District of Columbia, to be paid for at the time of said filing; and subsection (b) of § 45-909 shall have no application to associations organized under this chapter. After such filing and recording, he shall issue a certificate of incorporation, whereupon the corporate existence shall begin. Such certificate shall be conclusive evidence of the fact that the corporation has been duly incorporated. This shall not preclude the institution of quo warranto proceedings under §§ 16-1601 to 16-1611. The filing or recording of the articles or of amendments thereto, or of any other papers pursuant to this chapter is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person or incorporated or unincorporated group dealing with the association shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording. (June 19, 1940, 54 Stat. 482, ch. 397, § 6; 1973 Ed., § 29-806.)

Cross references. — As to exceptions to coverage of rental housing conversion procedures and expiration provisions thereof, see § 45-1618.

Section references. — This section is referred to in § 45-1618.

References in text. — Sections 16-1601 to 16-1611, referred to at the end of the next-to-last sentence, were repealed by the Act of Dec. 23, 1963, 77 Stat. 620, Pub. L. 88-241, § 21(a).

§ 29-1107. Same — Amendments; vote required for proposal and approval of amendments.

(a) Amendments to the articles may be proposed by a two-thirds vote of the board of directors, or by petition of 10% of the association's members. Notice of the meeting to consider such amendment shall be sent by the secretary at least 30 days in advance thereof to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt said amendment and when verified by the president and secretary, it shall be filed and recorded with the Recorder of Deeds within 30 days of its adoption, and a fee of $1 shall be paid.

(b) If the amendment is to alter the preferences of outstanding shares of any type, or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning such outstanding shares affected by the change shall also be required for the adoption of the amendment; if the amendment is to alter the rule by which members' property rights in a nonshare association are determined, a vote of two-thirds of the entire membership shall be required.

(c) The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. (June 19, 1940, 54 Stat. 483, ch. 397, § 7; 1973 Ed., § 29-807.)

§ 29-1108. Bylaws; adoption, amendment, or repeal.

Bylaws shall be adopted, amended, or repealed by at least a majority vote of the members voting. (June 19, 1940, 54 Stat. 483, ch. 397, § 8; 1973 Ed., § 29-808.)

§ 29-1109. Same — Contents.

The bylaws may, within the limitations of this chapter, provide for:

(1) The method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

(2) The time, place, and manner of calling and conducting meetings;

(3) The number or percentage of the members constituting a quorum;

(4) The number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) The compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) The method of distributing the net savings; or

(7) The various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities of the association. (June 19, 1940, 54 Stat. 483, ch. 397, § 9; 1973 Ed., § 29-809.)

§ 29-1110. Meetings; regular and special.

Regular meetings of members shall be held as prescribed in the bylaws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without the District of Columbia as the articles may prescribe. (June 19, 1940, 54 Stat. 483, ch. 397, § 10; 1973 Ed., § 29-810.)

§ 29-1111. Same — Notice.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last known address not less than the number of days in advance of the meeting specified in the bylaws. In case of a special meeting, the notice shall specify the purpose for which such meeting is called. (June 19, 1940, 54 Stat. 483, ch. 397, § 11; 1973 Ed., § 29-811.)

§ 29-1112. Same — Units of membership.

The articles or bylaws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both such methods. (June 19, 1940, 54 Stat. 484, ch. 397, § 12; 1973 Ed., § 29-812.)

§ 29-1113. Voting — Number permitted by each member.

(a) Each member of an association shall have 1 and only 1 vote, except as may be altered in the articles or bylaws for:

(1) Voting by member organizations; or

(2) Allocation of votes in a cooperative housing association proportionate to the share of ownership in the association or on the basis of 1 vote for each unit.

(b) No voting agreement or other device to evade the requirements of this section shall be enforceable at law or in equity. Any action taken prior to June 29, 1984, by a cooperative housing association, which at the time of the action adhered to a proportionate voting or a 1 unit/1 vote structure, shall not be held invalid solely because of that voting structure. (June 19, 1940, 54 Stat. 484, ch. 397, § 13; 1973 Ed., § 29-813; Mar. 14, 1984, D.C. Law 5-57, § 2(b), 30 DCR 6290; June 29, 1984, D.C. Law 5-92, § 2(b), 31 DCR 2542.)

Section references. — This section is referred to in §§ 29-1101 and 29-1125.

Legislative history of Law 5-57. — See note to § 29-1101.

Legislative history of Law 5-92. — See note to § 29-1101.

District has clearly codified legislative policy which prohibits cooperatives with proportional voting from doing business in District. Watergate S., Inc. v. Duty, App. D.C., 464 A.2d 141 (1983).

Cited in Snowden v. Benning Heights Coop., App. D.C., 557 A.2d 151 (1989).

§ 29-1114. Same — Proxy prohibited.

No member shall be permitted to vote by proxy. (June 19, 1940, 54 Stat. 484, ch. 397, § 14; 1973 Ed., § 29-814.)

Section references. — This section is referred to in § 29-1125.

§ 29-1115. Same — By mail.

(a) The articles or bylaws may provide for either or both of the following types of voting by mail:

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days; and

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

(b) The articles or bylaws may also determine whether and to what extent mail votes shall be counted in computing a quorum. (June 19, 1940, 54 Stat. 484, ch. 397, § 15; 1973 Ed., § 29-815.)

§ 29-1116. Voting provisions — Application to voting by mail.

If an association has provided for voting by mail, any provision of this chapter referring to votes cast by the members shall be construed to include the votes cast by mail. (June 19, 1940, 54 Stat. 484, ch. 397, § 16; 1973 Ed., § 29-816.)

§ 29-1117. Same — Application to voting by delegates.

If an association has provided for voting by delegates any provision of this chapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail. (June 19, 1940, 54 Stat. 484, ch. 397, § 17; 1973 Ed., § 29-817.)

§ 29-1118. Directors.

(a) An association shall be managed by a board of not less than 5 directors, who shall be elected for a term fixed in the bylaws not to exceed 3 years, by and from the members of the association and shall hold office until their successors are elected, or until removed. The bylaws of an association that provides multi-family cooperative housing for low and moderate income persons who are receiving assistance through 1 or more of the federal programs described in § 47-1002(20) may provide that 1 or more of the directors but not a majority of

the directors may be appointed by a nonprofit sponsoring organization which helped create the association so as to maintain a continuing and stabilizing interest in its well being; provided, that the sponsoring organization shall not appoint any directors after the association has been established for 10 years. Such director or directors appointed by the sponsoring organization need not be members of the association. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the bylaws may provide.

(b) The bylaws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or bylaws may prescribe.

(d) Meetings of directors and of the executive committee may be held within or without the District of Columbia. (June 19, 1940, 54 Stat. 484, ch. 397, § 18; 1973 Ed., § 29-818; Mar. 5, 1981, D.C. Law 3-156, § 2(a), 27 DCR 5113.)

Legislative history of Law 3-156. — Law 3-156, the "District of Columbia Cooperative Association Act of 1980," was introduced in Council and assigned Bill No. 3-225. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-283 and transmitted to both Houses of Congress for its review.

Cited in Capitol Cab Coop. Ass'n v. Darden, App. D.C., 169 A.2d 463 (1961).

§ 29-1119. Officers.

The officers of an association shall include a president, 1 or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the bylaws otherwise provide. The president and at least 1 vice-president must be directors, but no other officer need be a director. (June 19, 1940, 54 Stat. 485, ch. 397, § 19; 1973 Ed., § 29-819.)

§ 29-1120. Removal of directors and officers; vote required for approval; vacancies.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the bylaws for election of directors. (June 19, 1940, 54 Stat. 485, ch. 397, § 20; 1973 Ed., § 29-820.)

§ 29-1121. Referendum on acts of directors.

The articles or bylaws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10% of all the members or by vote of at least a majority of the directors; provided, however, that the rights of

third parties which have vested between the time of such action and such referendum shall not be impaired thereby. (June 19, 1940, 54 Stat. 485, ch. 397, § 21; 1973 Ed., § 29-821.)

Cited in Capitol Cab Coop. Ass'n v. Darden, App. D.C., 169 A.2d 463 (1961).

§ 29-1122. Limitations upon the return on capital.

(a) The return upon capital shall not exceed 6% per annum upon the paid-up capital and shall be noncumulative.

(b) Total return upon capital distributed for any single period shall not exceed 50% of the net savings for that period. (June 19, 1940, 54 Stat. 485, ch. 397, § 22; 1973 Ed., § 29-822.)

Section references. — This section is referred to in § 29-1131.

§ 29-1123. Eligibility and admission to membership.

Any natural person, association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group, shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or bylaws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. 485, ch. 397, § 23; 1973 Ed., § 29-823.)

Section references. — This section is referred to in § 29-1101.

§ 29-1124. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or bylaws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers. (June 19, 1940, 54 Stat. 485, ch. 397, § 24; 1973 Ed., § 29-824.)

§ 29-1125. Share and membership certificates; issuance and contents.

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of §§ 29-1113, 29-1114, and 29-1126 herein. (June 19, 1940, 54 Stat. 485, ch. 397, § 25; 1973 Ed., § 29-825.)

§ 29-1126. Transfer of shares and memberships; withdrawal.

(a) If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If the association fails, within 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association. (June 19, 1940, 54 Stat. 485, ch. 397, § 26; 1973 Ed., § 29-826.)

Section references. — This section is referred to in § 29-1125.

§ 29-1127. Share and membership certificates — Recall.

The bylaws may give the directors the power to use the reserve funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the bylaws, the directors may use the reserve funds to recall all his holdings and thereupon he shall cease to be a member of the association. When so recalled, such certificates of share or membership capital shall be either reissued or cancelled. (June 19, 1940, 54 Stat. 485, ch. 397, § 27; 1973 Ed., § 29-827.)

§ 29-1128. Same — Exemption for attachment, execution and garnishment.

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed $50, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to such liability, the directors of the association may either admit the purchaser thereof to membership, or may purchase from him such holdings at par value. (June 19, 1940, 54 Stat. 485, ch. 397, § 28; 1973 Ed., § 29-828.)

§ 29-1129. Liability of members.

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificate subscribed by him. No

subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up. (June 19, 1940, 54 Stat. 486, ch. 397, § 29; 1973 Ed., § 29-829.)

§ 29-1130. Expulsion of members; procedure; purchase of holdings.

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least 10 days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds. (June 19, 1940, 54 Stat. 486, ch. 397, § 30; 1973 Ed., § 29-830.)

Applicability. — This section did not apply to plaintiff's expulsion from a voluntary membership organization of independent taxicab owners and operators where the organization was organized as a nonprofit corporation in Delaware and registered to conduct business in the District, and had not elected to be bound by the provisions of this chapter under § 29-1140. Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988).

Procedural safeguards of section not met. — Where a stockholder did not receive written notice of the meeting of the association wherein the resolution expelling him was adopted and, more importantly, he was not given an opportunity to be heard when he attended the meeting, he was not provided with the procedural safeguards afforded by this section and was not properly expelled from the association. Clydesdale, Inc. v. Wegener, App. D.C., 372 A.2d 1013 (1977).

Cited in Snowden v. Benning Heights Coop., App. D.C., 557 A.2d 151 (1989); Plaza W. Coop. v. Rhodes, 117 WLR 397 (Super. Ct. 1989).

§ 29-1131. Allocation and distribution of net savings.

At least once a year the members and/or the directors, as the articles or bylaws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10% shall be placed in a reserve fund until such time as the fund shall equal at least 50% of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of § 29-1136 herein;

(2) A return upon capital, within the limitations of § 29-1122, may be paid upon share capital, or, if the bylaws so provide, upon the membership capital certificates of a nonshare association; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or bylaws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association; and

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage; provided, that:

(A) In the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares, or additional membership capital;

(B) In the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or bylaws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(C) In the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has accumulated at any time within a period of time specified in the bylaws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the bylaws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him; and

(D) If within any periods of time specified in the articles or bylaws: (i) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (ii) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (iii) any nonmember patron has accumulated the sum necessary for membership but neither requests nor agrees to become a member, or fails to comply with the provisions of the bylaws, if any, for admission to membership; then the amounts so accumulated or paid in and any part of the general fund for nonmember patrons which has not been allocated to individual nonmember patrons shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such; provided further, that nothing in this section shall prevent an association under this chapter which is engaged in rendering services from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members; and provided further, that nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of their serial number or date of issue. (June 19, 1940, 54 Stat. 486, ch. 397, § 31; 1973 Ed., § 29-831.)

Section references. — This section is referred to in § 29-1101.

§ 29-1132. Bonding of officers and employees.

Every individual acting as officer or employee of an association and handling funds or securities amounting to $1,000 or more, in any 1 year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the bylaws may also provide for the bonding of other employees or officers. (June 19, 1940, 54 Stat. 486, ch. 397, § 32; 1973 Ed., § 29-832.)

§ 29-1133. Audit.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director. Where the annual business amounts to less than $10,000, the audit may be performed by an auditing committee of 3, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. (June 19, 1940, 54 Stat. 488, ch. 397, § 33; 1973 Ed., § 29-833.)

§ 29-1134. Annual report of association; contents; penalty for false statement.

(a) Every association shall annually, within 60 days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the Recorder of Deeds. The report shall state:

(1) The name and principal address of the association;

(2) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any;

(3) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For nonshare associations the annual report shall state the total number of members, the number admitted or withdrawn during the year, and the amount of membership fees received; and

(4) The receipts, expenditures, assets, and liabilities of the association.

(b) A copy of this report shall be kept on file at the principal office of the association.

(c) Any person who shall subscribe or make oath to such report containing a materially false statement, known to such person to be false, shall upon conviction of such offense be punished by a fine of not less than $25 nor more than $200, or by imprisonment of not less than 30 days nor more than 1 year, or both such fine and imprisonment.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions on any person who shall subscribe or make oath to such report containing a materially false statement, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 19, 1940, 54 Stat. 488, ch. 397, § 34; 1973 Ed., § 29-834; Oct. 5, 1985, D.C. Law 6-42, § 448(a), 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, §§ 2(s)(1), 26(a), 38 DCR 314.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-1135. Same — Notice of delinquent reports; failure to file; mandamus.

If an association fails to make such report within the required period of 60 days, the Recorder of Deeds shall within 60 days from the expiration of said period send such association a registered letter directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within 60 days from the mailing of such notice, any member of the association or the United States Attorney for the District of Columbia may by petition for mandamus against the association and its proper officers compel such filing to be made, and in such case the court shall require the association or the officers at fault to pay all the expenses of the proceeding including counsel fees. (June 19, 1940, 54 Stat. 488, ch. 397, § 35; 1973 Ed., § 29-835.)

§ 29-1136. Dissolution; methods; vote required for approval; distribution of assets.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the members voting 3 of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. A suit for involuntary dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in §§ 29-419 to 29-424, and 29-426 to 29-429; provided, that any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order:

(1) By paying its debts and expenses;

(2) By returning to members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and

(3) By distributing any surplus in either or both of the following ways as the articles may provide:

(A) Among those patrons who have been members or subscribers at any time during the past 6 years, on the basis of their patronage during that period; or

(B) As a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the articles. (June 19, 1940, 54 Stat. 489, ch. 397, § 36; 1973 Ed., § 29-836.)

Section references. — This section is referred to in §§ 29-1105 and 29-1131.

Legislative history of Law 7-128. — Law 7-128, the "Tenant Assistance Program Low-Yield Cooperative Association Amendment Temporary Act of 1988," was introduced in Council and assigned Bill No. 7-438. The Bill was adopted on first and second readings on March 22, 1988, and April 19, 1988, respectively. Signed by the Mayor on May 6, 1988, it was assigned Act No. 7-177 and transmitted to both Houses of Congress for its review.

§ 29-1137. Penalties — Unauthorized use of term "cooperative"; existing cooperatives.

(a) Only: (1) Associations organized under this chapter; (2) groups organized on a cooperative basis under any other law of the District of Columbia; and (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia; shall be entitled to use the term "cooperative", or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis.

(b) Any person, firm, or corporation violating the above provision shall upon conviction of such offense be punished by a fine of not less than $25 nor more than $200, with an additional fine of not more than $200 for each month during which a violation occurs after the first month, or by imprisonment for not less than 30 days nor more than 1 year, or by both such fine and imprisonment. The United States Attorney for the District of Columbia, or any individual, or association, or group organized on a cooperative basis, may sue to enjoin an alleged violation of this section. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6.

(c) Should a court of competent jurisdiction decide that any person, firm, or corporation using the name "cooperative" prior to this chapter, and not organized on a cooperative basis, is entitled to continue in such use, any such

business shall always place immediately after its name the words "does not comply with the cooperative association law of the District of Columbia" in the same kind of type, and in letters not less than two-thirds as large, as those used in the term "cooperative". (June 19, 1940, 54 Stat. 489, ch. 397, § 37; June 25, 1948, 62 Stat. 909, ch. 646, § 1; 1973 Ed., § 29-837; Oct. 5, 1985, D.C. Law 6-42, § 448(b), 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, §§ 2(s)(2), 26(b), 38 DCR 314.)

Section references. — This section is referred to in §§ 29-1101 and 29-1144.

Legislative history of Law 6-42. — See note to § 29-1134.

Legislative history of Law 8-237. — See note to § 29-1134.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-1138. Same — Promotion expenses.

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any compensation for the organization of the association except necessary legal fees; nor for the payment of any promotion expenses in excess of 5% of the amount paid in for the shares or membership certificates involved in the promotion transaction; provided, however, any association which provides multi-family cooperative housing for low and moderate income persons who are receiving assistance through 1 or more of the available federal programs described in § 47-1002(20) may pay compensation for the organization of the association, including necessary legal fees, and for promotional expenses in the amount approved by the federal agency administering the program of assistance to the members of the association without the limitations imposed by this section. Any association's officer, director, or agent who gives, or any person, firm, corporation or association which receives such promotion commission in violation of this section shall, upon conviction of such offense, be punished by a fine of not less than $25, nor more than $200, or by imprisonment for not less than 30 days nor more than 1 year, or by both such fine and imprisonment. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 19, 1940, 54 Stat. 489, ch. 397, § 38; 1973 Ed., § 29-838; Mar. 5, 1981, D.C. Law 3-156, § 2(b), 27 DCR 5113; Oct. 5, 1985, D.C. Law 6-42, § 448(c), 32 DCR 4450.)

Legislative history of Law 3-156. — See note to § 29-1118.

Legislative history of Law 6-42. — See note to § 29-1134.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-1139. Same — Spreading false reports about management or finances.

Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any association shall, upon conviction of such offense, be punished by a fine of not less than $25 and not more than $200, or by imprisonment for not less than 30 days nor more than 1 year, or by both such fine and imprisonment. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 19, 1940, 54 Stat. 490, ch. 397, § 39; 1973 Ed., § 29-839; Oct. 5, 1985, D.C. Law 6-42, § 448(d), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-1134.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 29-1140. Existing cooperative groups; acceptance of act; filing and recordation of amended articles and bylaws.

Any group incorporated under another law of the District of Columbia and operating on a cooperative basis or any unincorporated group operating on such a basis in the District of Columbia may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this chapter, and shall thereupon amend such of its articles and bylaws as are not in conformity with this chapter. A certified copy of the amended articles shall be filed and recorded with the Recorder of Deeds and a fee of $5 shall be paid. (June 19, 1940, 54 Stat. 490, ch. 397, § 40; 1973 Ed., § 29-840.)

Section references. — This section is referred to in § 29-1101.

Cited in Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988).

§ 29-1141. Foreign corporations and associations; admission to do business.

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state wherein it is organized shall be entitled to do business in the District of Columbia as a foreign cooperative corporation or association, and shall govern itself in accordance with its bylaws and the laws of the state wherein it is organized. (June 19, 1940, 54 Stat. 490, ch. 397, § 41; 1973 Ed., § 29-841; June 29, 1984, D.C. Law 5-92, § 2(c), 31 DCR 2542.)

Section references. — This section is referred to in §§ 29-1101 and 29-1144.

Legislative history of Law 5-92. — See note to § 29-1101.

Termination of memberships. — This section permits a foreign cooperative to terminate membership pursuant to the laws of the state where it is incorporated and the terms of its occupancy agreement, and does not require a vote of the membership pursuant to § 29-1130. Snowden v. Benning Heights Coop., App. D.C., 557 A.2d 151 (1989).

Cited in Mazanderan v. Independent Taxi Owners' Ass'n, 700 F. Supp. 588 (D.D.C. 1988); Plaza W. Coop. v. Rhodes, 117 WLR 397 (Super. Ct. 1989).

§ 29-1142. Compliance with chapter; not in restraint of trade.

No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. (June 19, 1940, 54 Stat. 490, ch. 397, § 42; 1973 Ed., § 29-842.)

§ 29-1143. Inconsistent laws deemed inapplicable.

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of §§ 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. Chapter 4 of Title 26 (relating to licenses for loaning of money), and Chapter 33 of Title 28 (relating to interest rates) shall not apply to: (1) any association formed under this chapter (whose sole function is to arrange and provide financing for its members); and (2) any members of such association engaged in utility operations; with respect to any contract or agreement between such association and any member relating to a loan of money in connection with such utility operations. (June 19, 1940, 54 Stat. 490, ch. 397, § 43; Aug. 20, 1970, 84 Stat. 828, Pub. L. 91-385, § 1; 1973 Ed., § 29-843.)

§ 29-1144. Taxation; annual license fee.

Associations formed hereunder, and foreign corporations and associations admitted under § 29-1141 to do business in the District of Columbia and entitled to the benefits of § 29-1137, shall pay an annual license fee of $10. (June 19, 1940, 54 Stat. 490, ch. 397, § 44; 1973 Ed., § 29-844.)

§ 29-1145. Severability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (June 19, 1940, 54 Stat. 490, ch. 397, § 45; 1973 Ed., § 29-845.)

§ 29-1146. Reservation of right to amend or repeal.

The Congress reserves the right to alter, amend, or repeal this chapter, or any charter or certificate of incorporation made thereunder. (June 19, 1940, 54 Stat. 491, ch. 397, § 46; 1973 Ed., § 29-846.)

§ 29-1147. Short title.

This chapter may be cited as the "District of Columbia Cooperative Association Act." (June 19, 1940, 54 Stat. 491, ch. 397, § 47; 1973 Ed., § 29-847.)

§ 29-1148. Imposition of civil fines, penalties, and fees; adjudications.

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infracton of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 19, 1940, ch. 397, § 42a, as added Oct. 5, 1985, D.C. Law 6-42, § 448(e), 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 29-1134.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

CHAPTER 12. FRANCHISING.

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29-1203. Good cause; opportunity to cure.
29-1204. Transfer, assignment, or sale of franchise.
29-1205. Nonjudicial dispute resolution.
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§ 29-1201. Definitions.

For the purposes of this chapter, the term:

(1) "Person" means a natural person, partnership, joint venture, corporation, or other entity.

(2) "Franchise" means a written or an oral agreement entered into or effective in the District of Columbia for a definite or an indefinite period of time, pursuant to which:

(A) A person grants to another person a license to use a trade name, trademark, service mark, or related characteristic;

(B) A community interest in the marketing of goods or services at wholesale, retail, by lease agreement, or otherwise is established;

(C) The franchisee is required to pay, either directly or indirectly, a franchise fee in excess of $500;

(D) The franchisee is obligated to deposit the receipts from the business subject to the franchise into a bank account controlled by the franchisor or jointly controlled by the franchisee and the franchisor; and

(E) Revenue from the business subject to the franchise is shared by the franchisor and franchisee in accordance with an agreed formula, after deductions from revenue are made for costs of goods sold and other operating expenses.

(3) "Franchisor" means a person who grants a franchise to another person.

(4) "Franchisee" means a person to whom a franchise is granted.

(5) "Franchise fee" means any fee or charge that a franchisee is required to pay for the right to enter into a business subject to a franchise including, but not limited to, any payment for goods and services.

(6) "Sale, transfer, or assignment" means any disposition of a franchise or any interest in a franchise, with or without consideration, including, but not limited to, bequest, inheritance, gift, exchange, lease, or license.

(7) "Good cause" means:

(A) Failure by the franchisee to comply substantially with requirements imposed upon the franchisee by the franchise; or

(B) Lack of good faith by the franchisee in carrying out the terms of the franchise.

(8) "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing in the trade.

(9) "Voluntary abandonment" means failure by a franchisee or his agent to operate a business subject to a franchise for 5 consecutive days during which

the franchisee is required to operate the business under the terms of the franchise, unless the failure to operate is due to unforeseeable causes beyond the control of the franchisee. (Mar. 16, 1989, D.C. Law 7-185, § 2, 35 DCR 7906.)

Section references. — This section is referred to in § 29-1203.

Legislative history of Law 7-185. — Law 7-185, the "Franchising Act of 1988," was introduced in Council and assigned Bill No. 7-439, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 27, 1988, and October 11, 1988, respectively. Signed by the Mayor on October 25, 1988, it was assigned Act No. 7-244 and transmitted to both Houses of Congress for its review.

Cited in Southland Corp. v. Godette, 793 F. Supp. 348 (D.D.C. 1992).

§ 29-1202. Termination, cancellation, or failure to renew franchise.

(a) It shall be a violation of this chapter for any franchisor to terminate, cancel, or fail to renew a franchise without prior written notice to the franchisee setting forth all reasons for the termination, cancellation, or failure to renew at least 60 days prior to the termination, cancellation, or failure to renew, except that:

(1) Written notice may be given 15 business days in advance of the termination, cancellation, or failure to renew, when the alleged grounds are voluntary abandonment of the franchise by the franchisee; and

(2) Written notice may be given immediately prior to the termination, cancellation, or failure to renew when the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of 1 year and directly related to the business conducted pursuant to the franchise.

(b) A franchisor shall provide written notification to the Advisory Neighborhood Commission and ward Councilmember 60 days prior to closing any store subject to a franchise that is located within the boundaries of the ward or neighborhood commission area. Written notification shall not be required pursuant to this subsection, if a store is temporarily closed due to a natural disaster, the exercise of health department regulations, or fire. (Mar. 16, 1989, D.C. Law 7-185, § 3, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1203. Good cause; opportunity to cure.

For purposes of this chapter, there shall be good cause, as defined in § 29-1201(7), for terminating, cancelling, failing to renew; or failing to consent to the transfer of a franchise. A franchisee shall have 60 days from the date of notification of termination, cancellation, or failure to renew or consent to the transfer of the franchise to cure the alleged cause for the termination, cancellation, or failure to renew or consent to the transfer. (Mar. 16, 1989, D.C. Law 7-185, § 4, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1204. Transfer, assignment, or sale of franchise.

(a) It shall be a violation of this chapter for any franchisee to transfer, assign, or sell a franchise or an interest in a franchise to another person without prior written notification to the franchisor of the intention. The notice shall set forth the prospective transferee's name, address, statement of financial qualification, and business experience during the previous 5 years. The franchisor shall, in writing, within 60 days after receipt of the notice either approve the sale to the proposed transferee or disapprove the proposed transfer and advise the franchisee of the unacceptability of the proposed transferee and all reasons for the disapproval. If the franchisor does not disapprove, in writing, within the 60-day period, the proposed transfer is deemed approved.

(b) No transfer, assignment, or sale under this section shall be valid unless the transferee agrees, in writing, to comply with all requirements of the franchise to be transferred. No franchisor, directly or indirectly, shall refuse to consent or unreasonably delay consent to the assignment, sale, transfer, bequeath, or intestate succession of a franchise to any person unless the person fails to meet reasonable qualifications of the franchisor. (Mar. 16, 1989, D.C. Law 7-185, § 5, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1205. Nonjudicial dispute resolution.

Parties to a franchise may agree to arbitration, mediation, or other nonjudicial resolution of an existing dispute related to the franchise. (Mar. 16, 1989, D.C. Law 7-185, § 6, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1206. Remedies.

Any party to a franchise may bring an action for a violation of this chapter in the Superior Court of the District of Columbia to recover damages or request injunctive relief. The franchisee, if successful, shall be entitled to the costs of the action including, but not limited to, attorney's fees. (Mar. 16, 1989, D.C. Law 7-185, § 7, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1207. Conflict.

If any other law of the District of Columbia conflicts with the provisions of this chapter, this chapter shall prevail, except that this chapter shall not affect

the applicability of Chapter 45 of Title 28, Chapter 25 of Title 1, or § 43-1815 or § 43-1816. (Mar. 16, 1989, D.C. Law 7-185, § 8, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

§ 29-1208. Application of chapter.

(a) This chapter shall apply to any business subject to a franchise with yearly gross annual receipts to the franchisee from the franchise of $25,000 or more.

(b) This chapter shall apply to any existing franchise, a franchise granted, renewed, or modified after March 16, 1989, or an amendment to an existing franchise. (Mar. 16, 1989, D.C. Law 7-185, § 9, 35 DCR 7906.)

Legislative history of Law 7-185. — See note to § 29-1201.

CHAPTER 13. LIMITED LIABILITY COMPANIES.

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§ 29-1301. Definitions.

For the purposes of this chapter, the term:

(1) "Articles of organization" means the articles of organization filed with the Mayor for the purpose of forming a limited liability company and includes all amendments and restatements thereof.

(2) "Authorized person" means any person, whether or not a member, who is authorized by the articles of organization, by an operating agreement, or otherwise, to execute or file a document required or permitted to be executed or filed on behalf of a limited liability company or foreign limited liability company under this chapter, or to otherwise act as an agent of the limited liability company.

(3) "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act.

(4) "Code" means the District of Columbia Code.

(5) "Contribution" means anything of value that a person contributes to a limited liability company in that person's capacity as a member, including cash, property, services rendered, or a written promissory note or other written binding obligation to contribute cash or property or to perform services.

(6) "Distribution" means a direct or indirect transfer of money or other property (including a return of a member's contribution), or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

(7) "District" means the District of Columbia.

(8) "Domestic corporation" has the same meaning as defined in § 29-302, but shall also include a professional corporation as defined in § 29-602.

(9) "Domestic limited partnership" has the same meaning as specified in § 41-401.

(10) "Financial rights" means a member's rights to share in profits and losses of, and distributions from, a limited liability company.

(11) "Foreign corporation" has the same meaning as defined in § 29-302.

(12) "Foreign limited liability company" means a limited liability company formed under the laws of a state other than the District.

(13) "Foreign limited partnership" has the same meaning as defined in § 41-401.

(14) "General partnership" includes a limited liability partnership.

(15) "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

(16) "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association, without perpetual duration, having 2 or more members that is organized and existing under this chapter.

(17) "Manager" means a person designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization.

(18) "Mayor" means the Mayor of the District or the agent designated by him or her to perform any function vested in the Mayor by this chapter.

(19) "Member" means a person that owns an interest in a limited liability company.

(20) "Membership interest" or "interest" means a member's share of the profits and losses of the limited liability company and a member's right to receive distributions of the limited liability company's assets.

(21) "Operating agreement" means a written agreement and any written amendment thereto of the members as to the affairs of a limited liability company and the conduct of its business.

(22) "Person" means a natural person (age 18 or older), partnership (whether general or limited and whether domestic or foreign), limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

(23) "Principal office" means the office, in or out of the District, where the principal executive offices of a domestic or foreign limited liability company are located.

(24) "Professional limited liability company" means a limited liability company organized under this chapter solely for the purpose of rendering professional services through its members, managers, employees, or agents.

(25) "Professional service" has the same meaning as specified in § 29-602.

(26) "State" means any state, territory, colony, dependency, or possession of the United States of America, or any foreign country or other foreign jurisdiction. (July 23, 1994, D.C. Law 10-138, § 2, 41 DCR 3010.)

Legislative history of Law 10-138. — Law 10-138, the "Limited Liability Company Act of 1994," was introduced in Council and assigned Bill No. 10-277, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 4, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-243 and transmitted to both Houses of Congress for its review. D.C. Law 10-138 became effective on July 23, 1994.

§ 29-1301.1. Purposes.

Every limited liability company formed under this chapter has the purpose of engaging in any lawful business, except as otherwise provided by the laws of the District, unless a more limited purpose is set forth in the articles of organization. (July 23, 1994, D.C. Law 10-138, § 2a, as added Sept. 8, 1995, D.C. Law 11-38, § 2(a), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 added this section.

Legislative history of Law 11-38. — Law 11-38, the "Limited Liability Company Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-75, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-71 and transmitted to both Houses of Congress for its review. D.C. Law 11-38 became effective on September 8, 1995.

Application of Law 11-38. — Section 3 of D.C. Law 11-38 provided that the provisions of § 2 of the act shall apply as of July 23, 1994.

§ 29-1302. Formation.

One or more persons may form a limited liability company by signing and filing articles of organization with the Mayor. Such person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. (July 23, 1994, D.C. Law 10-138, § 3, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1303. Powers.

Unless the articles of organization provide otherwise, every limited liability company has and may exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is formed. In additon, subject to such standards and restrictions, if any, as are set forth in the articles of organization or operating agreement, every limited liability company may indemnify and hold harmless any member, agent, manager, or employee from and against any and all claims and demands, except in the case of action or failure to act by the member, agent, manager, or employee which constitutes wilful misconduct or recklessness. (July 23, 1994, D.C. Law 10-138, § 4, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1304. Name.

(a) A limited liability company name shall contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC." A professional limited liability company name shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "PLLC."

(b) A limited liability company name shall not contain:

(1) The words "Corporation", "Incorporated", "Limited Partnership", or the abbreviations "Corp.", "Inc.", or "L.P.";

(2) Any word or phrase the use of which is prohibited by law for such company; or

(3) Any word or phrase which indicates or implies that it is organized for any purpose other than 1 or more of the purposes contained in its articles of organization.

(c) Except as authorized by subsection (d) of this section, a limited liability company name shall not be the same as, or deceptively similar to:

(1) The name of a domestic limited liability company, domestic corporation, domestic limited partnership, foreign limited liability company, foreign corporation, or foreign limited partnership registered to transact business in the District;

(2) A limited liability company name reserved under § 29-1305; or

(3) The fictitious name adopted by a foreign limited liability company, foreign limited partnership, or foreign corporation because its real name is unavailable for use in the District.

(d) A domestic limited liability company may apply to the Mayor for authorization to use a name that is the same as, or deceptively similar to, 1 or more of the names described in subsection (c) of this section. The Mayor shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in a form satisfactory to the Mayor to change its name to a name that is not the same, as, or deceptively similar to, the name of the applying limited liability company.

(e) A foreign limited iability company which has a name that is the same as, or deceptively similar to, 1 or more of the names described in subsection (c) of this section may adopt a fictitious name for use in transacting business in the District, which fictitious name is not the same as, or deceptively similar to, the names described in subsection (c) of this section, by filing with the Mayor a statement, which shall be executed by an authorized person, which execution may be by facsimile signature, setting forth the fictitious name which will be used in transacting business in the District; provided, however, that a foreign limited liability company may not adopt a fictitious name for use in transacting business in the District if that foreign limited liability company has a name that is the same as, or deceptively similar to, the name of a domestic limited liability company, domestic corporation, domestic limited partnership, foreign limited liability company, foreign corporation, or foreign limited partnership registered to transact business in the District which engages in the same business as the foreign limited liability company. (July 23, 1994, D.C. Law 10-138, § 5, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(b), 42 DCR 3269.)

Section references. — This section is referred to in § 29-1355.

Effect of amendments. — D.C. Law 11-38, in (a), added "or 'LLC'" at the end of the first sentence, and added "or 'PLLC'" at the end of the second sentence.

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1305. Reserved name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a domestic limited liability company under this chapter and to adopt that name;

(2) Any domestic limited liability company proposing to change its name;

(3) Any foreign limited liability company intending to register in the District and adopt that name;

(4) Any foreign limited liability company proposing to change its name; or

(5) Any person intending to organize a foreign limited liability company under this chapter and intending to have it register in the District and adopt that name.

(b) The reservation shall be made by filing with the Mayor an application to reserve a specified name, executed by the applicant, which execution may be by facsimile signature. If the Mayor finds that the limited liability company name applied for is available, he or she shall reserve the name for the applicant's exclcusive use for a 60-day period.

(c) The owner of a reserved limited liability company name may renew the reservation for successive periods of 60 days each.

(d) The owner of a reserved limited liability company name may transfer the reservation to another person by filing with the Mayor a notice of the transfer, executed by the applicant for whom the name was reserved, which execution may be by facsimile signature, and specifying the name to be transferred and the name and address of the transferee. (July 23, 1994, D.C. Law 10-138, § 6, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1304.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1306. Articles of organization.

(a) The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The latest date on which the limited liability company is to be dissolved; and

(3) The address, including street and number, if any, of the limited liability company's initial registered office, the name of its initial registered agent at that office, and evidence of the registered agent's consent pursuant to § 29-1309.

(b) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement of a limited liability company.

(c) The articles of organization need not set forth any of the powers enumerated in this chapter.

(d) A limited liability company shall file with the Mayor duplicate originals of the articles of organization, which shall be executed by an authorized person, which execution may be by facsimile signature. If the Mayor finds that the articles of organization conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office;

(3) Issue a certificate of organization to the limited liability company to which he or she shall affix the other duplicate original; and

(4) Deliver the certificate of organization, together with the duplicate original of the articles of organization affixed thereto, to the person forming the limited liability company or such person's representative.

(e) If, at the time the articles of organization are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (d) of this section, the articles of organization are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The articles of organization as delivered conform to the filing provisions of this chapter; or

(2) The articles of organization have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the articles of organization for filing or the person's representative.

(f) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (e)(2) of this section, the documents shall not be deemed to be filed.

(g) A limited liability company is formed as of the later of (1) the time established in the articles of organization, or (2) when the articles of organization are delivered to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (d)

of this section. If the articles of organization, as delivered to the Mayor, do not conform to the filing provisions of this chapter and are not brought into conformance within the period prescribed by subsection (e)(2) of this section, the limited liability company shall be deemed to have never been formed. Each copy of the articles of organization stamped "Filed" and marked with the month, day, and year of the filing thereof is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter. (July 23, 1994, D.C. Law 10-138, § 7, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(c), 42 DCR 3269.)

Section references. — This section is referred to in § 29-1313.

Effect of amendments. — D.C. Law 11-38 substituted "§ 29-1309" for "§ 29-1310" at the end of (a)(3).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1307. Amendment of articles of organization.

(a) A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved, unless the articles of organization or an operating agreement of that limited liability company provide otherwise, by those members with voting rights holding at least a majority of the interests in profits of the limited liability company.

(b) A limited liability company shall amend its articles of organization on authorization of a change in (1) the name of the limited liability company, or (2) the latest date on which the limited liablity company is to be dissolved.

(c) To amend its articles of organization, a limited liability company shall file with the Mayor duplicate originals of the articles of amendment, which shall be executed by an authorized person, which execution may be by facsimile signature, setting forth:

(1) The name of the limited liability company;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption; and

(4) A statement that the amendment was adopted by a vote of the members in accordance with the limited liability company's articles of organization and applicable law.

(d) If the articles of organization contain any typographical errors, error of transcription, or other technical errors or have been defectively executed, the articles of organization may be corrected by the filing of articles of correction. Articles of correction may not make any other change or amendment that would not have complied in all respects with the requirements of this chapter at the time the articles of organization were filed. Articles of correction may not change the effective date of the articles of organization.

(e) To correct its articles of organization, a limited liability company shall file with the Mayor duplicate originals of the articles of correction, which shall be executed by an authorized person, which execution may be by facsimile signature, setting forth:

(1) The name of the limited liability company;

(2) The date the articles of organization were filed; and

(3) The provision in the articles of organization as previously filed and as corrected, and if execution of the articles of organization was defective, the manner in which it was defective.

(f) If the Mayor finds that the articles of amendment or articles of correction conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such dupicate originals in his or her office;

(3) Issue a certificate of amendment or certificate of correction, as appropriate, to the limited liability company to which he or she shall affix the other duplicate original; and

(4) Deliver the certificate of amendment or certificate of correction, with the duplicate original of the articles of amendment or articles of correction, as appropriate, attached thereto, to the limited liability company or its representatives.

(g) If, at the time the articles of amendment or articles of correction are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (f) of this section, the articles of amendment or articles of correction are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The articles of amendment or articles of correction as delivered conform to the filing provisions of this chapter; or

(2) The articles of amendment or articles of correction have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the articles of amendment or articles of correction for filing or the person's representative.

(h) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (g)(2) of this section, the documents shall not be deemed to be filed.

(i) The amendment or correction shall become effective and the articles of organization shall be deemed to be amended or corrected accordingly as of the later of (1) the time established in the articles of amendment or articles of correction, or (2) when the articles of amendment or articles of correction are delivered to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (f) of this section. If the articles of amendment or articles of correction, as filed with the Mayor, do not conform to the filing provisions of this chapter and are not brought into conformance within the period prescribed by subsection (g)(2) of this section, the amendment or correction shall be deemed to have never been made.

(j) No amendment shall affect any existing cause of action in favor of or against the limited liability company, or any pending suit to which such limited liability company shall be a party, or the existing rights of persons other than members of the limited liability company, and, in the event the name of the limited liability company shall be changed by amendment, no suit brought by or against such limited liability company under its former name shall abate for that reason. No correction shall affect any right or liability accrued or incurred before its filing, except that any right or liability incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document. (July 23, 1994, D.C. Law 10-138, § 8, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1308. Restated articles of organization.

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its articles of organization that are then in effect and operative as a result of there having been filed previously with the Mayor 1 or more articles or other instruments, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.

(b) If the restated articles of organization merely restate and integrate but do not further amend the articles of organization, as previously amended or supplemented by any instrument that was filed, the restated articles of organization may be adopted by an authorized person without a vote of the members. If the restated articles of organization restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, the restated articles of organization shall be approved, unless the articles of organization or an operating agreement of the limited liability company provide otherwise, by those members with voting rights holding at least a majority of the interests in profits of the limited liability company.

(c) Restated articles of organization shall be specifically designated as such in the heading. The restated articles shall state, either in the heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was organized, and the date of filing of its original articles of organization with the Mayor. The restated articles shall also state that they were duly adopted in accordance with the provisions of this section. If the restated articles were adopted by a designated person without a vote of the members, they shall state that they only restate and integrate and do not further amend the provisions of the limited liability company's articles of organization as previously amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated articles.

(d) Restated articles of organization shall be executed in duplicate by an authorized person, which execution may be by facsimile signature. Duplicate

originals of the restated articles of amendment shall be delivered to the Mayor. If the Mayor finds that the restated articles of organization conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office;

(3) Issue restated articles to the limited liability company to which he or she shall affix the other duplicate original; and

(4) Deliver the restated articles, with the duplicate original of the restated articles of organization attached thereto, to the limited liability company or its representatives.

(e) If, at the time the restated articles of organization are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (d) of this section, the restated articles of organization are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The restated articles of organization as delivered conform to the filing provisions of this chapter; or

(2) The restated articles of organization have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the restated articles of organization for filing or the person's representative.

(f) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (e)(2) of this section, the documents shall not be deemed to be filed.

(g) The restated articles of organization shall become effective as of the later of (1) the time established in the restated articles of organization, or (2) when the restated articles of organization are delivered to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (d) of this section. If the restated articles of organization, as filed with the Mayor, do not conform to the filing provisions of this chapter and are not brought into conformance within the period prescribed by subsection (e)(2) of this section, the restated articles of organization shall be deemed to have never become effective. (July 23, 1994, D.C. Law 10-138, § 9, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1309. Registered office and registered agent.

Each domestic limited liability company and each foreign limited liability company registered pursuant to this chapter shall have and continuously maintain in the District:

(1) A registered office, which office may be, but need not be, the same place as its place of business; and

(2) A registered agent, which agent may be either an individual resident in the District or a corporation, authorized by its articles of organization to act as agent and authorized to transact business in the District, having a business

office identical with the registered office. An individual or corporation shall not be named by a domestic or foreign limited liability company as its registered agent without the individual's or corporation's consent. This consent shall be evidenced by a written document executed by the registered agent, which execution may be by facsimile signature, which shall be filed with the Mayor. (July 23, 1994, D.C. Law 10-138, § 10, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1353.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1310. Change of registered office or registered agent.

(a) A domestic limited liability company or a foreign limited liabilty company registered pursuant to this chapter may change its registered office or registered agent, or both, upon filing with the Mayor a statement setting forth:

(1) The name of the domestic limited liability company or foreign limited liability company;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office is changed, the address, including the street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent; and

(5) If its registered agent is changed, the name of its successor registered agent and a written statement executed by the successor registered agent consenting to be named as the domestic or foreign limited liability company's registered agent.

(b) The registered agent of 1 or more domestic or foreign limited liability companies may change the address of the registered office of such domestic or foreign limited liability companies by filing with the Mayor a statement setting forth:

(1) The name of the registered agent;

(2) The present address, including street and number, if any, of such registered agent;

(3) The names of the domestic and foreign limited liability companies represented by such registered agent at such address;

(4) The address, including the street and number, if any, to which the office of the registered agent is to be changed; and

(5) The date on which such change will take place.

(c) A statement by a domestic or foreign limited liability company changing its registered office or registered agent, or both, shall be executed in duplicate by the domestic or foreign limited liability company by an authorized person, which execution may be by facsimile signature, and delivered to the Mayor. The statement of a registered agent of 1 or more domestic or foreign limited liability companies changing the address of the registered office shall be executed in duplicate by the registered agent in the agent's individual name, but if the agent is a corporation, domestic or foreign, the statement shall be executed by the corporation, by its president or a vice-president, which execution, in either event, may be by facsimile signature, and delivered to the

Mayor. If the Mayor finds that a statement by a domestic or foreign limited liability company changing its registered office or registered agent, or both, or the statement of a registered agent changing the address of the registered office conforms to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office; and

(3) Return the other duplicate original to the domestic or foreign limited liability company, in the case of a statement filed by a domestic or foreign limited liability company changing its registered office or registered agent, or both, and to the registered agent, in the case of a statement of a registered agent changing the address of the registered office.

(d) If, at the time a statement is delivered for filing, the Mayor is unable to make the determination required for filing by subsection (c) of this section, the statement is deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The statement as delivered conforms to the filing provisions of this chapter; or

(2) The statement has been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the statement for filing or the person's representative.

(e) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (d)(2) of this section, the documents shall not be deemed to be filed.

(f) The change of the registered office, the change of registered agent or the change of address of a registered agent, as the case may be, shall become effective as of the later of (1) the time established in the statement, or (2) when the statement is delivered to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (c) of this section. If the statement, as delivered to the Mayor, does not conform to the filing provisions of this chapter and is not brought into conformance within the period prescribed by subsection (d)(2) of this section, the statement shall be deemed to have never been made. (July 23, 1994, D.C. Law 10-138, § 11, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1306.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1311. Resignation of registered agent.

Any registered agent of a domestic or foreign limited liability company may resign as the agent upon executing and delivering written notice to the Mayor, the domestic or foreign limited liability company at its registered office, and the domestic or foreign limited liability company at its principal office. The appointment of such an agent shall terminate upon the expiration of 30 days after receipt of the notice by the Mayor or upon the appointment of a successor

agent, whichever occurs first. (July 23, 1994, D.C. Law 10-138, § 12, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1312. Registered agent as agent for service; service when no registered agent.

(a) The registered agent so appointed by a domestic or foreign limited liability company shall be an agent of such limited liability company upon whom process against the limited liability company may be served, and upon whom any notice or demand required or permitted by law to be served upon the domestic or foreign limited liability company may be served. Service of any process, notice, or demand upon a corporate registered agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice-president, secretary, or an assistant secretary of such corporate registered agent.

(b) Whenever a domestic or foreign limited liability company shall fail to appoint or maintain a registered agent in the District, or whenever the registered agent cannot with reasonable diligence be found at the registered office, the Mayor shall be an agent of the limited liability company upon whom any process against the domestic or foreign limited liability company may be served and upon whom any notice or demand required or permitted by law to be served upon the limited liability company may be served. Service on the Mayor of any process, notice, or demand shall be made by delivering to and leaving with the Mayor, or with any clerk having charge of the Mayor's office, duplicate copies of the process, notice, or demand and a fee of $10. If any process, notice, or demand is so served, the Mayor shall immediately cause 1 of the copies to be forwarded by registered or certified mail to the limited liability company at its principal office or at its last known address.

(c) The Mayor shall keep a record of all processes, notices, and demands served upon him or her under this section, and shall record therein the time of such service and his or her action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a domestic or foreign limited liability company, in any manner now or herafter permitted by law. (July 23, 1994, D.C. Law 10-138, § 13, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1313. Partnership conversion to a limited liability company.

(a) A general partnership organized in the District or any state and a domestic or foreign limited partnership may be converted to a limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a general partnership or a limited partnership to a limited liability company must be approved by (1) all the general partners and, in the case of a limited partnership, by a majority in interest of the limited partners, or (2) by a number or percentage of partners specified for conversion in the applicable partnership agreement.

(c) After the conversion is approved under subsection (b) of this section, the general partnership or limited partnership shall prepare articles of organization which, in addition to setting forth those items set forth in § 29-1306, shall set forth:

(1) A statement that the general partnership or limited partnership was converted to a limited liability company from a general partnership or a limited partnership, as the case may be; and

(2) The general partnership's or limited partnership's former name.

(d) A general partnership or limited partnership shall file with the Mayor duplicate originals of the articles of organization, which shall be executed by an authorized person, which execution may be by facsimile signature. If the Mayor finds that the articles of organization conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office;

(3) Issue a certificate of organization to the limited liability company to which he or she shall affix the other duplicate original; and

(4) Deliver the certificate of organization, together with the duplicate original of the articles of organization affixed thereto, to the person or persons forming the limited liability company or such person's representatives.

(e) If, at the time the articles of organization are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (d) of this section, the articles of organization are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The articles of organization as delivered conform to the filing provisions of this chapter; or

(2) The articles of organization have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the articles of organization for filing or the person's representative.

(f) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (e)(2) of this section, the documents shall not be deemed to be filed.

(g) The conversion of the limited liability company takes effect as of the later of (1) the time established in the articles of organization, or (2) when the articles of organization are delivered to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (d) of this section. If the articles of organization, as delivered to the Mayor, do not conform to the filing provisions of this chapter and are not brought into conformance within the period prescribed by subsection (e)(2) of this section, the limited liability company shall be deemed to have never been

formed. Each copy of the articles of organization stamped "Filed" and marked with the month, day, and year of the filing thereof is conclusive evidence that all conditions precedent required to be performed by the general partnership or limited partnership have been complied with and that the limited liability company has been legally organized and formed under this chapter.

(h) A general partner who becomes a member of a limited liability company as a result of the conversion remains liable as a general partner for any obligation incurred by the general partnership or limited partnership before the conversion takes effect. The liability of a limited partner for obligations incurred by a limited partnership which has been converted to a limited liability company is determined by the law of the state in which the limited partnership was organized.

(i) A general partnership or limited partnership that has been converted pursuant to this section is for all purposes the same entity that existed before the conversion, modified by the provisions of this chapter which are controlling.

(j) When a conversion takes effect:

(1) The title to all real estate and other property owned by the converting general partnership under § 41-107, (or by the general partners by tenancy in partnership) or by the limited partnership remains vested in the converted entity without reversion or impairment;

(2) All liabilities of the converting general partnership or limited partnership continue as liabilities of the converted entity; and

(3) Any proceeding pending by or against the converting general partnership or limited partnership may be continued as if the conversion had not occurred.

(k)(1) Except as provided in paragraph (3) of this subsection, the recordation tax imposed by § 45-923, or the transfer tax imposed by § 47-903, shall not be imposed, in connection with the conversion of a partnership to a limited liability company, upon the following:

(A) The filing of the articles of organization of the limited liability company converting the partnership to a limited liability company;

(B) The recordation of a deed reflecting that the limited liability company has become the legal title holder; or

(C) The transfer of title or other interest in real property from the partnership to the limited liability company.

(2) The exemptions enumerated in paragraph (1) of this subsection shall be effective regardless of whether the deed or transfer to the limited liability company is from nominees or trustees for the predecessor partnership or from the predecessor partnership itself.

(3) The exemptions enumerated in paragraph (1) of this subsection shall only be applicable if:

(A) The members of the limited liability company are identical to the partners of the converting general or limited partnership;

(B) Each member's allocation of the profits and losses of the limited liability company is identical to his or her allocation of the profits and losses of the converting general or limited partnership; and

(C) There is no change in the members of the limited liability company or in the allocation to any member in the profits and losses of the limited liability company during the 12-month period following the effective date of the conversion, other than by reason of the death of a member or the involuntary dissolution of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 14, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(d), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 added (k).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

Exemption from taxation for transfers of property from partnership to a limited liability company. — For provisions regarding the exemption taxation for the transfer of property from a partnership to a limited liability company, see § 47-902(16) as added by § 4(c) of D.C. Law 11-38.

§ 29-1314. Liability to third parties.

(a) Nothing in this section shall affect the liability of limited liability companies.

(b) Except as otherwise provided by this chapter or as expressly provided in the articles of organization, no member, manager, employee, or other agent of a limited liability company shall have any personal obligation for any debts, obligations, or liabilities of a limited liability company, whether such debts, obligations, or liabilities arise in contract, tort, or otherwise, solely by reason of being a member, manager, employee, or agent of a limited liablity company.

(c) With respect to members of professional limited liability companies, a member shall be personally liable and accountable only for any negligent or wrongful acts or misconduct committed by such member, or by any individual under such member's supervision and control in the rendering of professional service on behalf of a professional limited liability company organized under this chapter. No member of a professional limited liability company shall be so personally liable and accountable merely because of such member's membership interest in the professional limited liability company. (July 23, 1994, D.C. Law 10-138, § 15, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1375.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1315. Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, except where (1) the object of the proceeding is to enforce a member's right against or liability to the limited liability company, or (2) as provided in §§ 29-1343 through 29-1346. (July 23, 1994, D.C. Law 10-138, § 16, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(e), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 substituted "29-1346" for "29-1347."

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1316. Limited liability company property.

Any estate or interest in property may be acquired in the name of the limited liability company, and title to any estate or interest so acquired vests in the limited liability company. (July 23, 1994, D.C. Law 10-138, § 17, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1317. Management of limited liability company.

(a) Except to the extent that the articles of organization provide for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

(b) The articles of organization or operating agreement of a limited liability company may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or operating agreement may provide, and may make provision for the future creation, in the manner provided in the articles of organization or operating agreement, of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. The articles of organization or operating agreement of a limited liability company may provide for the taking of an action, including the amendment of the articles of organization or operating agreement, without the vote or approval of any member of class or group of members, including an action to create under the provisions of the articles of organization or operating agreement a class or group of limited liability company interests that was not previously outstanding.

(c) The articles of organization or operating agreement of a limited liability company may grant to all or certain identified members of a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis.

(d) Unless otherwise provided in the articles of organization or an operating agreement (1) the members of a limited liability company shall vote in proportion to their respective interests in the profits of the limited liability company, and (2) decisions concerning the affairs of the limited liability company shall require the consent of those members with voting rights holding at least a majority of the interests in profits of the limited liability company.

(e) Articles of organization or operating agreements which grant members a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote. (July 23, 1994, D.C. Law 10-138, § 18, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1318. Operating agreement.

(a) The members of a limited liability company may enter into an operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of the District or the articles of organization.

(b) An operating agreement may provide that:

(1) A member or manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in the operating agreement, a member or manager shall be subject to specified penalties or specified consequences.

(c) An initial operating agreement must be agreed to by all of the then members of the limited liability company.

(d) Unless otherwise provided in the articles of organization or an operating agreement, those members with voting rights holding at least a majority of the interests in profits of the limited liability company must agree to any amendment of an operating agreement. (July 23, 1994, D.C. Law 10-138, § 19, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1319. Management of a limited liability company by a manager.

(a) The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among 1 or more managers.

(b) Unless otherwise provided in the articles of organization or an operating agreement, managers need not be residents of the District or members of the limited liability company. The articles of organization or an operating agreement may prescribe other qualifications for managers.

(c) The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

(d) Managers shall be designated, appointed, elected, removed, or replaced by the members.

(e) Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by

those members with voting rights holding at least a majority of the interests in profits of the limited liability company.

(f) Any or all managers may be removed in the manner provided in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, all managers or any lesser number may be removed with or without cause by those members with voting rights holding at least a majority of the interests in profits of the limited liability company.

(g) Unless otherwise provided in the articles of organization or an operating agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers. (July 23, 1994, D.C. Law 10-138, § 20, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1320. Limitation of liability of members and managers; exception.

(a) The liability of a manager or member in any proceeding brought by or in the right of a limited liability company or brought by or on behalf of members of the limited liability company may be limited or eliminated in the articles of organization or an operating agreement, except if the manager or member engaged in wilful misconduct.

(b) No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of organization or operating agreement with respect to any act or omission occurring before such amendment. (July 23, 1994, D.C. Law 10-138, § 21, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1321. Business transactions of members or managers with the limited liability company.

Unless otherwise provided in the articles of organization or an operating agreement, a member or manager may transact business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager. (July 23, 1994, D.C. Law 10-138, § 22, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1322. Information and records.

(a) Each limited liability company shall keep at its principal office the following:

(1) A current list, in alphabetical order, of the full name and last known business, residence, or mailing address of each member;

(2) A copy of the articles of organizaqtion and the certificate of organization, and all articles of amendment and certificates of amendment thereto;

(3) Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(4) Copies of any effective operating agreement; and

(5) Unless contained in an operating agreement, a writing setting out:

(A) The amount of cash, if any, and a description and statement of the agreed value of the other property or services, if any, contributed by each member and which each member has agreed to contribute;

(B) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

(C) Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution; and

(D) Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(b) Each member of a limited liability company has the right, upon reasonable request and subject to such reasonable standards as may be set forth in the articles of organization or an operating agreement, to inspect and copy, at the member's own expense, any of the limited liability company records required to be maintained by this section.

(c) Failure of the limited liability company to keep or maintan any of the records or information required pursuant to this section shall not affect the status of the limited liability company under this chapter. (July 23, 1994, D.C. Law 10-138, § 23, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1323. Contributions.

(a) The contributions of a member to a limited liability company may consist of anything of value, including cash, property, services rendered, or a written promissory note or other written binding obligation to contribute cash or property or to perform services.

(b) Unless otherwise provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services. If a member does not make the required contribution of property or services, such member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(c) Unless otherwise provided in the articles of organization or an operating agreement, if a member is unable to perform any enforceable promise to perform services because of death or disability, such member or such member's successor or assign shall have the option of either:

(1) Contributing cash equal to that portion of the value of a stated contribution that the member had promised to make in services, but had failed to make; or

(2) Forfeiting the member's interest in the limited liability company.

(d) Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution may be compromised only by consent of all the members. (July 23, 1994, D.C. Law 10-138, § 24, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1324. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, profits and losses shall be allocated on the basis of the value, as stated in the limited liability company records, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. (July 23, 1994, D.C. Law 10-138, § 25, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1325. Sharing of distributions.

Distributions of cash or other assets of a limited liability company shall be made among the members, and among classes of members, in the manner provided in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, distributions shall be made on the basis of the value, as stated in the limited liability company records, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. (July 23, 1994, D.C. Law 10-138, § 26, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1326. Interim distributions.

Except as provided in this chapter, a member is entitled to receive distributions from a limited liability company before such member's resignation from the limited liability company and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement. (July 23, 1994, D.C. Law 10-138, § 27, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1351.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1327. Distribution upon resignation.

(a) Except as otherwise provided in this chapter, upon resignation, any resigning member is entitled to receive any distribution to which such member is entitled under the articles of organization or an operating agreement, and, if not otherwise provided in the articles of organization or an operating agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's membership interest as of the date of resignation.

(b) If the resignation of the member is a breach of an operating agreement, or the resignation occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the resigning member damages for breach of the operating agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of the services that the resigning member was obligated to perform, and may offset the damages against the amount otherwise distributable to the resigning member, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. (July 23, 1994, D.C. Law 10-138, § 28, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1351.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1328. Distribution in kind.

Unless otherwise provided in the articles of organization or an operating agreement, a member, regardless of the nature of such member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Unless otherwise provided in the articles of organization or an operating agreement, a member shall not be compelled to accept (in lieu of the member's share of a pro rata cash distribution) a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset that would otherwise be distributed to such member would exceed the percentage that such member's membership interest bears to all membership interests in the limited liability company. (July 23, 1994, D.C. Law 10-138, § 29, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1329. Restrictions on making distribution.

(a) No distribution shall be made by a limited liability company if, after giving effect to the distribution:

(1) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(2) Unless otherwise provided in the articles of organization or an operating agreement, the limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section either on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable in the circumstances.

(c) The effect of a distribution under subsection (a) of this section is measured as of (1) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or (2) the date the payment is made if it occurs more than 120 days after the date of authorization. (July 23, 1994, D.C. Law 10-138, § 30, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1330.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1330. Liability upon wrongful distribution.

If a member has received a distribution in violation of the articles of organization or an operating agreement of a limited liability company or in violation of § 29-1329, then such member is liable to the limited liability company for a period of 2 years thereafter for the amount of the distribution wrongfully made. (July 23, 1994, D.C. Law 10-138, § 31, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1336.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1331. Right to distribution.

Unless otherwise provided in the articles of organization or an operating agreement, at the time a member becomes entitled to receive a distribution, such member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. (July 23, 1994, D.C. Law 10-138, § 32, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1332. Admission of members.

(a) A person becomes a member of a limited liability company:

(1) At the time the limited liability company is formed; or

(2) At any later time specified in the articles of organization or operating agreement.

(b) Unless otherwise provided in the articles of organization or an operating agreement, after the formation of a limited liability company, a person may be admitted as a member:

(1) In the case of a person acquiring a membership interest directly from the limited liability company, upon the unanimous consent of the members; or

(2) In the case of an assignee of financial rights or governance rights coupled with financial rights of a member as provided in §§ 29-1335 and 29-1336, when the assignee's name, address, and the nature and extent of the assignment are reflected in the records of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 33, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(f), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 substituted "§§ 29-1335 and 29-1336" for "§§ 29-1336 and 29-1337" in (b)(2).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1333. Nature of interest in limited liability company.

A membership interest in a limited liability company is personal property. (July 23, 1994, D.C. Law 10-138, § 34, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1334. Resignation of member.

A member may resign from a limited liability company at the time or upon the happening of events specified in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, a member may resign upon not less than 6 months' prior written notice to the limited liability company or to each member at such member's address on the books of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 35, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1335. Assignment of financial rights.

(a) Except as provided in § 29-1337, a member's financial rights are assignable in whole or in part.

(b) An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled.

(c) Unless otherwise provided in the articles of organization or an operating agreement, an assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices

from the limited liability company, or to cause dissolution. (July 23, 1994, D.C. Law 10-138, § 36, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1336. Assignment of governance rights.

(a) A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all of the member's financial rights. A member's governance rights are assignable, in whole or in part, only as provided in this section.

(b) Subject to § 29-1337 and unless otherwise provided in the articles of organization or an operating agreement, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Subject to § 29-1337 and unless otherwise provided in the articles of organization or an operating agreement, any other assignment of any governance rights is effective only if those members with voting rights holding at least a majority of the interests in profits of the limited liability company, other than the member seeking to make the assignment, consent to the assignment.

(c) When an assignment of governance rights is effective under this section:

(1) The assignee becomes a member, if not already a member;

(2) If the assignor does not retain any governance rights:

(A) The assignor ceases to be a member; and

(B) The consent required in this section shall also constitute the dissolution avoidance consent necessary under § 29-1347(3) to avoid dissolution that would otherwise ensue under § 29-1347 on account of the assignor ceasing to be a member;

(3) The assignee is liable for any obligations of the assignor under §§ 29-1323 (including liability for unperformed promises which have been reflected as contributions in the records of the limited liability company) and 29-1330 existing at the time of assignment, except to the extent that, at the time the assignee became a member, the liability:

(A) Was unknown to the assignee; and

(B) Could not be ascertained from the records of the limited liability company; and

(4) Unless otherwise provided in the articles of organization or an operating agreement, the assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of assignment under §§ 29-1323 and 29-1330.

(d) If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required by this section:

(1) The purported or attempted assignment is ineffective in its entirety; and

(2) Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void. (July 23, 1994, D.C. Law

10-138, § 37, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(g), 42 DCR 3269.)

Section references. — This section is referred to in § 29-1332.

Effect of amendments. — D.C. Law 11-38 inserted "and unless otherwise provided in the articles of organization or an operating agreement" near the beginning of the first and second sentences of (b); and deleted "majority in interest" preceding "consent required" near the beginning of (c)(2)(B).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1337. Restrictions on assignment of financial and governance rights.

(a) A restriction on the assignment of financial or governance rights may be imposed in the articles of organization or in the operating agreement. A restriction is not binding with respect to financial or governance rights reflected in the records of the limited liability company prior to the adoption of the restriction, unless the owners of those financial or governance rights are parties to the agreement or voted in favor of the restriction.

(b) A written restriction on the assignment of financial or governance rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the records of the limited liability company may be enforced against the owner of the restricted financial or governance rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. (July 23, 1994, D.C. Law 10-138, § 38, 41 DCR 3010.)

Section references. — This section is referred to in §§ 29-1332, 29-1335, and 29-1336.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1338. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the interest of the member in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the financial interest in the limited liability company. This chapter does not deprive any member of the benefit of any exemption laws applicable to such member's interest in the limited liability company. (July 23, 1994, D.C. Law 10-138, § 39, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1339. Powers of estate of a deceased or incompetent member.

Unless otherwise provided in the articles of organization or an operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage such member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all the member's rights for the purpose of settling such member's estate or administering such member's property, including any power the member had to transfer a membership interest. Unless otherwise provided in the articles of organization or an operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor. (July 23, 1994, D.C. Law 10-138, § 40, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1340. Approval of merger or consolidation.

(a) As used in this section and in §§ 29-1341 and 29-1342, the term "other business entity" means a corporation, a business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership (whether general or limited), or a foreign limited liability company, but excluding a domestic limited liability company.

(b) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into 1 or more domestic limited liability companies or other business entities formed or organized under the laws of the District or any state, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity.

(c) Unless otherwise provided in the articles of organization or an operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members with voting rights holding at least a majority of the interests in profits of the limited liability company; provided, however, that if a domestic limited liability company is not to be the surviving or resulting entity in a proposed merger or consolidation, and as a result of such merger or consolidation the members of such domestic limited liability company shall not be afforded limited liability with respect to any other person or entity, the merger or consolidation shall be approved by the unanimous consent of all of the members, voting and nonvoting, of such domestic limited liability company.

(d) In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent part to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or

interests in, the surviving or resulting domestic limited liability company or other business entity, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securites of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation.

(e) Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation. (July 23, 1994, D.C. Law 10-138, § 41, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1341.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1341. Articles of merger or consolidation.

(a) If a domestic limited liability company is merging or consolidating under this chapter, the domestic limited liability company or other business entity surivivng or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Mayor. The articles of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity and the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed, or incorporated;

(4) If the merger or consolidation is not to be effective upon delivery of articles of merger or consolidation to the Mayor for filing, the future effective date or time of the merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof; and

(6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate.

(b) An agreement of merger or consolidation approved in accordance with § 29-1340 may:

(1) Effect any amendment to the articles of organization or operating agreement; or

(2) Effect the adoption of new articles of organization or operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

(c) Any amendment to the articles of organization or operating agreement or adoption of new articles of organization or operating agreement made pursuant to subsection (b) of this section shall be effective at the effective time or date of the merger or consolidation. The provisions of subsection (b) of this section shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in articles of organization, an operating agreement, or other agreement, or as otherwise permitted by law, including that the articles of organization and operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the articles of organization and operating agreement of the surviving or resulting limited liability company.

(d) The articles of merger or consolidation shall be executed in duplicate by the authorized person of the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation, which execution may be by facsimile signature, and delivered to the Mayor. If the Mayor finds that such articles of merger or consolidation conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office; and

(3) Issue a certificate of merger or consolidation to which he or she shall attach the other duplicate original.

(e) The certificate of merger or consolidation, together with the duplicate original affixed thereto, shall be delivered to the surviving entity or its representative.

(f) If, at the time the articles of merger or consolidation are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (d) of this section, the articles of merger or consolidation are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The articles of merger or consolidation as delivered conform to the filing provisions of this chapter; or

(2) The articles of merger or consolidation have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the articles of merger or consolidation for filing or the person's representative.

(g) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (f)(2) of this section, the documents shall not be deemed to be filed.

(h) The merger or consolidation shall become effective as of the later of (1) the time established in the articles of merger or consolidation, or (2) when the articles of merger or consolidation are deliverd to the Mayor for filing, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (d) of this section. If the articles of merger or consolidation, as delivered to the Mayor, do not conform to the filing provisions

of this chapter and are not brought into conformance within the period prescribed by subsection (f)(2) of this section, the merger or consolidation shall be deemed to have never occurred. (July 23, 1994, D.C. Law 10-138, § 42, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(h), 42 DCR 3269.)

Section references. — This section is referred to in § 29-1340.

Effect of amendments. — D.C. Law 11-38, in (c), substituted "subsection (b)" for "subsection (b)(2)" in the first sentence; and, in (g) and in the second sentence of (h), substituted "subsection (f)(2)" for "subsection (e)(2)."

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1342. Effect of merger or consolidation.

(a) When any merger or consolidation shall have become effective, for all purposes of the law of the District, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal, and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity, and the title to any real property vested by deed or otherwise, under the laws of the District, in any of such domestic limited liability companies and other business entities that have merged or consolidated shall not revert or be in any way impaired by reason of this chapter.

(b) All rights of creditors and all liens upon any property of any domestic limited liability companies and other business entities that have merged or consolidated shall be preserved unimpaired, and all debts, liabilities, and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

(c) Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs or pay its liabilities and distribute its assets.

(d) No member of a domestic limited liability company that is a party to a merger or consolidation will, as a result of the merger or consolidation, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the agreement of merger or consolidation or otherwise consents to becoming personally liable.

(e) No member, partner, owner, or other interest holder in any other business entity that is a party to a merger or consolidation shall be relieved of

personal liability with respect to liabilities or obligations incurred prior to the effective date of the merger or consolidation. (July 23, 1994, D.C. Law 10-138, § 43, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1340.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1343. Right of action.

A member may bring an action in the right of a limited liability company to recover a judgment in its favor to the same extent that a shareholder may bring an action for a derivative suit under the laws of the District. Such action may be brought if members or managers with authority to do so have refused to bring the action or if an effort to cause those members or managers to bring the action is not likely to succeed. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the members and the limited liability company in enforcing the right of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 44, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1315.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1344. Proper plaintiff.

In a derivative action, the plaintiff shall be a member at the time of bringing the action and (1) shall have been a member at the time of the transaction of which such member complains, or (2) such member's status as a member shall have devolved upon such member by operation of law or pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at the time of the transaction. (July 23, 1994, D.C. Law 10-138, § 45, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1315.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1345. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure commencement of the action by a member or manager with the authority to do so or the reasons for not making the effort. (July 23, 1994, D.C. Law 10-138, § 46, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1315.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1346. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, except as hereinafter provided, the court may award the

plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by such plaintiff. On termination of the derivative action, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the action if it finds that the action was commenced without reasonable cause or the plaintiff did not fairly and adequately represent the interests of the members and the limited liability company in enforcing the right of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 47, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1315.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1347. Dissolution; generally.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

(1) At the time or on the happening of the events specified in the articles of organization or an operating agreement;

(2) Upon the unanimous consent of the members with voting rights;

(3) Upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up if there are (A) at least 2 remaining members or at least 1 remaining member and a new member is admitted, and (B) either (i) within 90 days after the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the limited liability company, the remaining members with voting rights, unanimously consent to the continuation of the legal existence and business of the limited liability company, or (ii) there is compliance with the procedures set forth in the articles of organization or operating agreement for continuing the legal existence and business of the limited liability company; or

(4) The entry of a decree of judicial dissolution under § 29-1348. (July 23, 1994, D.C. Law 10-138, § 48, 41 DCR 3010; Apr. 18, 1996, D.C. Law 11-110, § 31, 43 DCR 530.)

Section references. — This section is referred to in § 29-1315.

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of "wound up" for "would up" in (3).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 29-1348. Judicial dissolution.

On application by or for a member, the Superior Court of the District of Columbia may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization or any operating agreement. (July 23, 1994, D.C. Law 10-138, § 49, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1347.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1349. Articles of dissolution.

(a) Within 90 days of dissolution, duplicate originals of articles of dissolution, which shall be executed by an authorized person, which execution may be by facsimile signature, shall be delivered to the Mayor. Articles of dissolution shall set forth:

(1) The name of the limited liability company;

(2) The date of filing of the articles of organization and each amendment thereto;

(3) The reason for filing the articles of dissolution;

(4) The date of dissolution;

(5) A statement that notice of the dissolution was sent by registered mail, postage prepaid, return receipt requested to all known creditors of the limited liability company and the date of the mailing, or a statement that the limited liability company has no known creditors; and

(6) Any other information the members determine to include therein.

(b) If the Mayor finds that the articles of dissolution conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office; and

(3) Issue a certificate of dissolution to the representative of the dissolved limited liability company to which he or she shall affix the other duplicate original.

(c) If, at the time the articles of dissolution are delivered for filing, the Mayor is unable to make the determination required for filing by subsection (b) of this section, the articles of dissolution are deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The articles of dissolution as delivered conform to the filing provisions of this chapter; or

(2) The articles of dissolution have been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the articles of dissolution for filing or the person's representative.

(d) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (c)(2) of this section, the documents shall not be deemed to be filed. (July 23, 1994, D.C. Law 10-138, § 50, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1350. Winding up.

(a) Unless otherwise provided in the articles of organization or an operating agreement, or unless the business or affairs of the limited liability company are continued under § 29-1347, the members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs, but the Superior Court of the District of Columbia, on cause shown, may wind up the limited liability company's affairs on application of any member or such member's legal representative or assign.

(b) The persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge, or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company. (July 23, 1994, D.C. Law 10-138, § 51, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1351. Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

(1) To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under § 29-1326 or § 29-1327;

(2) Unless otherwise provided in the articles of organization or operating agreement, to members and former members in satisfaction of liabilities for distributions under § 29-1326 or § 29-1327; and

(3) Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions. (July 23, 1994, D.C. Law 10-138, § 52, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1352. Law governing.

Subject to District law, the laws of the state or other jurisdiction under which a foreign limited liability company is formed govern its formation and internal affairs and the liability of its members and managers, and a foreign limited liability company may not be denied registration by reason of any difference

between those laws and the laws of the District. (July 23, 1994, D.C. Law 10-138, § 53, 41 DCR 3010.)

Section references. — This section is referred to in § 29-1361.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1353. Registration.

Before transacting business in the District, a foreign limited liability company shall register with the Mayor. In order to register, a foreign limited liability company shall deliver to the Mayor an application for registration as a foreign limited liability company setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in the District;

(2) The state or other jurisdiction under which it was formed and date of its formation, including its period of duration;

(3) The address, including the street and number, if any, of the registered office of the foreign limited liability company in the District, the name of the registered agent at such office, and evidence of the registered agent's consent pursuant to § 29-1309;

(4) A statement that the Mayor is irrevocably appointed the agent of the foreign limited liability company for service of process if no registered agent has been appointed under paragraph (3) of this section, or, if appointed, the registered agent's authority has been revoked or if the registered agent either has resigned or cannot be found or served with the exercise of reasonable diligence; and

(5) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company. (July 23, 1994, D.C. Law 10-138, § 54, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1354. Issuance of registration.

Duplicate originals of such application for registration, which shall be executed by an authorized person, which execution may be by facsimile signature, shall be delivered to the Mayor. If the Mayor finds that the application for registration conforms to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office; and

(3) Issue a certificate of registration to transact business in the District and return the certificate of registration to the person who filed the application or such person's representative. (July 23, 1994, D.C. Law 10-138, § 55, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1355. Name.

No certificate of registration shall be issued to a foreign limited liability company unless the name of such limited liability company satisfies the requirements of § 29-1304. If the name of a limited liability company does not satisfy the requirements of § 29-1304, to obtain or maintain a certificate of registration:

(1) The foreign limited liability company may add the words "limited liability company," or the abbreviation "L.L.C." or "LLC," to its name for use in the District; or

(2) If its real name is unavailable, the foreign limited liability company may use a fictitious name that is available, and which satisfies the requirements of § 29-1304, if it informs the Mayor of the fictitious name. (July 23, 1994, D.C. Law 10-138, § 56, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(i), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 substituted "abbreviation 'L.L.C.' or 'LLC'" for "abbreviations 'L.L.C.'" in (1).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1356. Changes and amendment.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the Mayor a certificate correcting such statement accompanied by a copy of the document, if any, affecting the correction or change duly authenticated by the proper officer of the state or other jurisdiction of its formation. (July 23, 1994, D.C. Law 10-138, § 57, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1357. Cancellation of certificate of registration.

(a) A foreign limited liability company may cancel its certificate of registration by delivering to the Mayor articles of cancellation which shall set forth:

(1) The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed;

(2) That the foreign limited liability company is not transacting business in the District and that it surrenders its registration to transact business in the District;

(3) That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the Mayor as its

agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the District;

(4) A mailing address to which the Mayor may mail a copy of any process served on him or her under paragraph (3) of this subsection; and

(5) A commitment to notify the Mayor in the future of any change in the mailing address of the limited liability company.

(b) Duplicate originals of such application for cancellation, which shall be executed by an authorized person, which execution may be by facsimile signature, shall be delivered to the Mayor. If the Mayor finds that the application for cancellation conforms to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals in his or her office;

(3) Issue a certificate of cancellation to transact business in the District; and

(4) Deliver the certificate of cancellation, with the duplicate original of the articles of cancellation attached thereto, to the representative of the cancelled limited liability company. (July 23, 1994, D.C. Law 10-138, § 58, 41 DCR 3010.)

Section references. — This section is referred to in §§ 29-1362 and 29-1363.

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1358. Transaction of business without registration.

(a) A foreign limited liability company transacting business in the District may not maintain any action at law or equity in any court of the District until it has obtained a certificate of registration. Nor shall any action at law or in equity be maintained in any court of the District by any successor or assignee of such limited liability company on any right, claim, or demand arising out of the transaction of business by such limited liability company in the District until a certificate of registration shall have been obtained by such limited liability company or by a limited liability company which has acquired all or substantially all of its assets.

(b) The failure of a foreign limited liability company to register in the District shall not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action at law or in equity in any court of the District.

(c) A foreign limited liability company which transacts business in the District without a certificate of registration shall be liable to the District, for the years or parts thereof during which it transacted business in the District without a certificate of registration, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such limited liability company had it duly applied for and received a certificate of registration to transact business in the District as required by this chapter and thereafter filed all reports required by this chapter; and in addition thereto it shall be liable for a penalty not in excess of $1000. The Mayor shall bring

proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of registration is issued to such foreign corporation.

(d) A foreign limited liability company, by transacting business in the District without registration, appoints the Mayor as its agent for service of process with respect to causes of action arising out of the transaction of business in the District.

(e) A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the limited liability company's having transacted business in the District without registration. (July 23, 1994, D.C. Law 10-138, § 59, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1359. Actions by Corporation Counsel.

The Corporation Counsel may bring an action to restrain a foreign limited liability company from transacting business in the Distict in violation of this chapter. (July 23, 1994, D.C. Law 10-138, § 60, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1360. Transactions not constituting doing business.

(a) The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

(1) Maintaining, defending, or settling any proceedings;

(2) Holding meetings of its members or carrying on any other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securites;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the District before they become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

(9) Owning, without more, real or personal property; or

(10) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.

(b) The list of activities in subsection (a) of this section is not exhaustive. This section does not apply in determining the contracts or activities that may

subject a foreign limited liability company to service of process or taxation in the District or to regulation under any other law of the District. (July 23, 1994, D.C. Law 10-138, § 61, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1361. Assent to District laws.

Except as provided in § 29-1352, by doing business in the District, a foreign limited liability company assents to the laws of the District. (July 23, 1994, D.C. Law 10-138, § 62, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1362. Merger of foreign limited liability company authorized to transact business in the District.

(a) Whenever a foreign limited liability company authorized to transact business in the District is a party to a merger permitted by the laws of the state under the laws of which it is organized, and that limited liability company is not the surviving entity of the merger, the surviving limited liability company, limited partnership or corporation shall, if not continuing to transact business in the District, within 30 days after such merger becomes effective, deliver to the Mayor a copy of the instrument of merger duly authenticated by the secretary of state or other official having custody of limited liability company records in the state under whose laws the merger was effected, and comply, on behalf of the predecessor limited liability company, with § 29-1357.

(b) If the surviving limited liability company, limited partnership, or corporation is to continue to transact business in the District and has not registered as a foreign limited liability company or limited partnership, or received a certificate of authority to transact business in the District as a foreign corporation, as the case may be, it shall, within 30 days after the merger becomes effective, deliver to the Mayor an application, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign limited partnership, for registration as a foreign limited partnership, or, if a foreign corporation, for a certificate of authority to transact business in the District, together with a duly authenticated copy of the instrument of merger and also a copy of its articles of organization, certificate of limited partnership, or articles of incorporation and all amendments thereto, duly authenticated by the secretary of state or other official having custody of the limited liability company, limited partnership, or corporate records in the state under whose laws it is organized, formed, or incorporated.

(c) Upon the merger of a foreign limited liability company with 1 or more foreign limited liability companies, limited partnerships, or corporations, all property in the District owned by any of the limited liability companies, limited partnerships, or corporations shall pass to the surviving limited liability company, limited partnership, or corporation, except as otherwise provided by

the laws of the state by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Mayor. (July 23, 1994, D.C. Law 10-138, § 63, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1363. Fees.

(a) The Mayor shall charge and collect the following fees:

(1) For filing an application for registration as a foreign limited liability company, the fee shall be $150.

(2) For filing any one of the following, the fee shall be $100:

(A) Articles of organization or articles of merger;

(B) Articles of amendment;

(C) Articles of correction;

(D) Articles of dissolution;

(E) Articles of cancellation;

(F) A certificate of correction referred to in § 29-1356;

(G) A copy of the document effecting a merger referred to in § 29-1362; and

(H) Petition for reinstatement.

(3) For filing any one of the following, the fee shall be $25:

(A) A statement of change of registered agent or change of the address of the registered office, or both;

(B) An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company;

(C) A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company; or

(D) A statement of fictitious name by a foreign limited liability company.

(4) For furnishing a certified copy of any document filed under this chapter with the Mayor, the fee shall be $25.

(b) The Mayor may amend the fees set forth in subsection (a) of this section and propose new fees by rulemaking which shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (July 23, 1994, D.C. Law 10-138, § 64, 41 DCR 3010; Sept. 8, 1995, D.C. Law 11-38, § 2(j), 42 DCR 3269.)

Effect of amendments. — D.C. Law 11-38 substituted "§ 29-1356" for "§ 29-1357" in (a)(2)(F).

Legislative history of Law 10-138. — See note to § 29-1301.

Legislative history of Law 11-38. — See note to § 29-1301.1.

Application of Law 11-38. — See note to § 29-1301.1.

§ 29-1364. Annual reports of domestic and foreign limited liability companies.

(a) Each domestic and foreign limited liability company shall file with the Mayor, before June 16th of each year, an annual report setting forth:

(1) The name of the limited liability company;

(2) The address, including street and number, if any, of its registered office, and the name of its registered agent at that office;

(3) The address, including street and number, if any, of its principal office in the District, if such office is other than its registered office; and

(4) The names and respective addresses, including street and number, if any, if its managers, if any.

(b) Such annual report shall be made on forms prescribed and furnished by the Mayor, the information therein contained shall be given as of the date of the execution of the report, and the report shall be executed by an authorized person, which execution may be by facsimile signature. (July 23, 1994, D.C. Law 10-138, § 65, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1365. Annual registration fees to be paid by domestic and foreign limited liability companies.

Every domestic limited liability company and every foreign limited liability company registered to transact business in the District shall pay to the Mayor an annual registration fee of $50, which sum shall be paid at the time of the filing of the annual report required of such limited liability companies pursuant to this chapter. (July 23, 1994, D.C. Law 10-138, § 66, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1366. Penalty for failure to timely pay annual registration fees or file annual reports.

If any domestic or any foreign limited liability company shall for 2 consecutive years fail or refuse to pay its annual registration fee or file its annual report, then, in the case of a domestic limited liability company, the articles of organization shall be void and all powers conferred upon such limited liability company are declared inoperative, and, in the case of a foreign limited liability company, the certificate of registration shall be revoked and all powers conferred thereunder shall be inoperative. (July 23, 1994, D.C. Law 10-138, § 67, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1367. Proclamation of revocation; effect of publication; extension of term of existence.

(a) On the second Monday in November of each year, the Mayor shall issue a proclamation listing the names of all domestic and foreign limited liability companies which have failed or refused to pay any annual registration fee or fees or failed or refused to file any annual report as required by this chapter for 2 consecutive years immediately preceding August 30 in the year in which such proclamation is issued. Upon the issance of such proclamation the articles of organization or the certificates of registration, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Mayor shall be filed in his or her office and shall be published once during the month of November in each of 2 general circulation newspapers published in the district once every 2 weeks or more frequently.

(c) Upon publication of the proclamation of revocation as provided in this chapter, each domestic limited liability company listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such limited liability company shall cease to carry on its business and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members, pay, satisfy, and discharge its liabilities and obligations, and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its members according to their respective rights and interest.

(d) All domestic limited liability companies, the articles of organization of which are revoked by proclamation, shall nevertheless be continued for the term of 3 years from the date of such revocation for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to collect their assets, convey and dispose of such of their properties as are not to be distributed in kind to their members, pay, satisfy, and discharge their liabilities and obligations, and do all other acts required to liquidate their business and affairs, and, after paying or adequately providing the payment of all their obligations, to distribute the remainder of their assets, either in cash or in kind, among their members according to their respective rights and interests, but not for the purpose of continuing the business for which such limited liability company shall have been organized; provided, however, that with respect to any action, suit, or proceeding begun or commenced by or against a limited liability company prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such limited liability company within 3 years after the date of such revocation or expiration, such limited liability company shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued beyond said 3-year period and until any judgments, orders, or decrees therein shall be fully executed.

(e) A member or manager of a domestic or foreign limited liability company is not liable for the debts, obligations, or liabilities of such domestic or foreign limited liability company solely by reason of the neglect, refusal, or failure of such domestic or foreign limited liability company to pay an annual registration fee or by reason of such domestic or foreign limited liability company becoming a proclaimed limited liability company. (July 23, 1994, D.C. Law 10-138, § 68, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1368. Carrying on business after issuance of proclamation.

Any limited liability company, person, or persons who shall exercise or attempt to exercise any powers under articles or organization of a domestic limited liability company or under a certificate of registration of a foreign limited liability company which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $1000 or by imprisonment not exceeding 1 year, or both, in the discretion of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions on any person who, or limited liability company that, commits an infraction of any provisions of this chapter or fails to comply with any provisions thereof, for which infraction or failure no penalty is provided therein or elsewhere in the laws of the District, pursuant to Chapter 27 of Title 6 ("Civil Infractions Act"). Adjudication of any infraction or failure shall be pursuant to Chapter 27 of Title 6. (July 23, 1994, D.C. Law 10-138, § 69, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1369. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Mayor that any limited liability company named in said proclamation has not failed or refused to pay any annual registration fee or file any annual report for 2 consecutive years, or has been inadvertently included in the list of limited liability companies as so failing or refusing to pay annual registration fees or file reports, the Mayor is authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of organization or certificate of registration, as the case may be, into good standing with like effect as if such proclamation of revocation, as to such limited liability company, had not been issued. (July 23, 1994, D.C. Law 10-138, § 70, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1370. Limited liability companies included in a proclamation; reservation of name.

The Mayor shall reserve the names of all domestic limited liability companies the articles of organization of which have been revoked and of all foreign limited liability companies the certficates of registration of which have been revoked until December 31st of the year in which the proclamation of revocation was issued, and no domestic limited liability companies shall be formed nor the name of any such domestic limited liability companies changed to a name the same as or deceptively similar to such reserved name nor shall any foreign limited liability company be authorized to do business under the name the same as or deceptively similar to such reserved name. (July 23, 1994, D.C. Law 10-138, § 71, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1371. Same — Procedure for reinstatement.

(a) A limited liability company, the articles of organization or certificate of registration of which have been revoked by proclamation, may at any time after the date of the issuance of the proclamation of revocation deliver to the Mayor a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual registration fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter.

(b) If the petition for reinstatement of a proclaimed limited liability company is delivered to the Mayor after the period for reservation of the name has expired and if he or she finds that the name is not available for use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of subsection (a) of this section, the proclaimed limited liability company shall set forth in its petition for reinstatement its name at the time of issuance of the proclamation of revocation and its new name, which shall be a name available for limited liability company use pursuant to the provisions of this chapter.

(c) If the Mayor finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for limited liability company use pursuant to the provisions of this chapter, he or she shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals and any such annual report or reports the word "Filed" and the month, day, and year of the filing thereof;

(2) File 1 of such duplicate originals and any such annual report or reports in his or her office;

(3) Issue a certificate of reinstatement to which he or she shall affix the other duplicate original; and

(4) Deliver such certificate of reinstatement and other duplicate original to the limited liability company or its representative.

(d) If, at the time the petition for reinstatement is delivered for filing, the Mayor is unable to make the determination required for filing by subsection (c) of this section, the petition for reinstatement is deemed to have been filed at the time of delivery if the Mayor subsequently determines that:

(1) The petition for reinstatement as delivered conforms to the filing provisions of this chapter; or

(2) The petition for reinstatement has been brought into conformance within 20 days after notification of nonconformance is given by the Mayor to the person who delivered the petition for reinstatement for filing or the person's representative.

(e) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (d)(2) of this section, the documents shall not be deemed to be filed.

(f) Upon delivery of the petition for reinstatement to the Mayor for filing, the revocation proceedings theretofore taken as to such limited liability company by proclamation shall be deemed to be annulled, and such limited liability company shall have such powers, rights, duties, and obligations as it had just prior to the time of the issuance of the proclamation with the same force and effect as to such limited liability company as if the proclamation had not been issued, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (c) of this section. If the petition for reinstatement, as delivered to the Mayor, does not conform to the filing provisions of this chapter and is not brought into conformance within the period prescribed by subsection (d)(2) of this section, the petition for reinstatement shall be deemed to have never been filed. (July 23, 1994, D.C. Law 10-138, § 72, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1372. Penalties for failure to file annual report on time.

Any limited liability company organized under this chapter or any foreign limited liability company having a certificate of registration under this chapter which fails or refuses to file the annual report required by this chapter to be filed before June 16th of each year shall pay a penalty of $25. (July 23, 1994, D.C. Law 10-138, § 73, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1373. Transaction of business outside the state.

(a) It is the intention of the Council of the District of Columbia by the enactment of this chapter that the legal existence of a limited liability company formed under this chapter be recognized beyond the limits of the District, and that, subject to any reasonable registration requirements, any such limited liability company transacting business outside the District be granted the

protection of full faith and credit under section 1 of Article IV of the Constitution of the United States.

(b) The provisions of this chapter shall determine the rights and obligations of a domestic limited liability company, organized under this chapter, in commerce with any state, except as prohibited by law. (July 23, 1994, D.C. Law 10-138, § 74, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1374. Taxation of limited liability companies.

For purposes of District taxation, a limited liability company formed under this chapter or qualified to do business in the District as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of District taxation, a member or an assignee of a member of a limited liability company formed under this chapter or qualified to do business in the District as a foreign limited liability company shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes. (July 23, 1994, D.C. Law 10-138, § 75, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.

§ 29-1375. Regulatory body authority.

Except for § 29-1314, nothing in this chapter is intended to restrict or limit in any manner the authority and duty of any regulatory body to license individuals rendering professional services within the District or to regulate the practice of any profession within the jurisdiction of such regulatory body. (July 23, 1994, D.C. Law 10-138, § 76, 41 DCR 3010.)

Legislative history of Law 10-138. — See note to § 29-1301.